

No .12247

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United States  
Court of Appeals  
For the Ninth Circuit.

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FRED ELIA IOB, SAMUEL M. DOBBS and  
WALDEMAR F. ULLRICH,

Appellants,

vs.

LOS ANGELES BREWING CO., INC., et al.,  
Appellees.

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Transcript of Record

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Upon Appeal from the United States District Court  
for the Southern District of California  
Central Division

FILED

AUG 31 1949

PAUL P. O'BRIEN,

CLERK



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Central Division





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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

JAMES M. CARTER,  
United States Attorney,  
CLYDE C. DOWNING and  
JAMES C. R. McCALL,  
Assistants U. S. Attorney,  
600 U. S. Post Office & Court House  
Bldg.,  
Los Angeles 12, Calif.

For Appellee Los Angeles Brewing Co.:

O'MELVENY & MYERS,  
433 S. Spring St.,  
Los Angeles 13, Calif.

For Appellee Joint Local Executive Board of California, an unincorporated association:

P. H. McCARTHY, JR.,  
518 Balboa Bldg., 593 Market St.,  
San Francisco 5, Calif. [\*1]

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\* Page numbering appearing at bottom of page of original certified Transcript of Record.

In the District Court of the United States in and  
for the Southern District of California, Central  
Division

No. 6322-Y Civil

FRED ELIA IOB, SAMUEL M. DOBBS and  
WALDEMAR F. ULLRICH,

Petitioners,

vs.

LOS ANGELES BREWING COMPANY, INC.,  
a corporation,

Respondent.

PETITION FOR ENFORCEMENT OF  
VETERAN'S REEMPLOYMENT RIGHTS

The petitioners above named respectfully allege:

I.

This petition is filed under the provisions of Section 8(e) of the Selective Training and Service Act of 1940, as amended (50 U.S.C.A. App. Sec. 308(e)), and Section 7 of the Service Extension Act of 1941 (50 U.S.C.A. App. Sec. 357); and jurisdiction of the Court is based thereon.

II.

The respondent corporation is engaged in the brewing business, and operates and maintains a brewery at Los Angeles, California, within the jurisdiction of this Court.

III.

Respondent employed petitioner Fred E. Iob as



a brewer, and the other petitioners as bottlers, in positions other than temporary, in the operation of said brewery, for several years before, and up to the times of their respective [2] departures for military service. During 1942 and 1945, the petitioners left such positions in the employ of respondent in order to enter upon active duty, or to perform training and service pursuant to the requirements of the Selective Training and Service Act of 1940, in the United States Army. They were promptly inducted and entered upon active duty in said army, and served therein thereafter until each had satisfactorily completed his period of training and service, and received a certificate thereof, and was honorably discharged from said army. Within 90 days after being so discharged, each petitioner, during the year 1945 or 1946, applied for reemployment by the respondent, while qualified to perform the duties of his former position in its employ, and was duly reemployed by the respondent in his former position, as required by law.

#### IV.

On or about October 5, 1946, and within one year after being so reemployed, each petitioner, other than Petitioner Fred E. Iob, was discharged from his said position by the respondent, without cause; and the respondent has ever since that date declined and refused to employ such petitioners, in their former positions, or in any other positions. By reason of such unlawful discharge, without cause, each petitioner has suffered a loss of wages since Octo-

ber 5, 1946, at the rate and in the sum stated in Paragraph VI below, and will continue to suffer a loss of wages in future at the same weekly rate until restored to employment by the respondent.

## V.

Petitioner Fred E. Iob has been twice discharged without cause from his said position since the date of his reemployment, and within one year thereafter. He was reemployed September 9, 1946, and was first discharged without cause on September 17, 1946. Representatives of the Selective Service System induced the respondent to place him back in employment, which it did on November 6, 1946, and again discharged him without cause on November 25, 1946. Since the latter date, the respondent has continued to decline and refuse to employ him in his former position, or in any other position. By reason of such unlawful discharges, petitioner Fred E. Iob has suffered a loss of wages at the rate of \$103.00 per week [3] from September 17, 1946, to November 6, 1946; and at the same rate from November 25, 1946, to date; and he will continue to suffer a loss of wages in future at the same rate until restored to employment by the respondent.

## VI.

The statistical facts concerning each individual petitioners' employment, reemployment and discharge by the respondent, and of his service in the U. S. Army are as follows:

	Samuel M. Dobbs	Waldemar F. Ullrich	Fred E. Iob
Position held .....	Bottler	Bottler	Brewer
Date first employed by the respondent..	July, 1937	Feb., 1937	Mar. 8, 1943
Date of termination to enter U. S. Army	Jan. 1, 1942	May 6, 1942	Feb. 24, 1945
Date of entry on active duty in U. S. Army	Jan. 9, 1942	May 9, 1942	Mar. 9, 1945
Date of discharge therefrom .....	Nov. 30, 1945	Feb. 8, 1946	July 20, 1946
Date of reemploy- ment .....	Jan. 2, 1946	Apr. 29, 1946	(1) Sept. 9, 1946 (2) Nov. 6, 1946
Hourly wage rate .....	\$1.365	\$1.365	
Weekly wage rate.....	\$95.00	\$95.55	\$103.00
Date of discharge without cause .....	Oct. 5, 1946	Oct. 5, 1946	(1) Sept. 17, 1946 (2) Nov. 25, 1946
Weekly loss of wages so caused .....	\$ 95.50	\$ 95.55	\$ 103.00
Loss of wages to date..	\$955.50	\$955.50	\$1,030.00
Weekly rate of future loss .....	\$ 95.55	\$ 95.55	\$ 103.00

## VII.

A common question of law and fact is involved in the individual complaints of the petitioners in that, as they understand, the reason for their said discharge was that they were not members of a certain new union, which, after about July 15, 1946, the respondent began insisting that they join, or belong to, as a condition of their continued employment in respondent's service for the period of their statutory reemployment.

## VIII.

In addition to the loss of wages, each petitioner

has suffered a loss in seniority in respondent's employ, because of such discharge.

Wherefore Petitioners Respectfully Pray:

(a) That the Court adjudge and decree that the petitioners were entitled to be reemployed in their former positions in the respondent's employ at the times of their applications therefor, and not to be discharged from such positions without cause for one year from the dates of their respective reemployment; and that the respondent's action in discharging them within such year was unlawful.

(b) That the respondent be ordered, directed and specifically required (1) To reemploy and restore each petitioner to his former position in its employ, without any loss of seniority due to absence in military service, or due to the unlawful discharges above mentioned; (2) To retain each petitioner in such employ without discharge unless for cause, for the portion of the reemployment year of each that remained unexpired when the petitioners were discharged; and (3) To compensate each petitioner for his loss of wages suffered by reason of such unlawful discharge, until he is so restored.

(c) That a preliminary injunction issue requiring the respondent to restore the petitioner pending the trial of this case; and that, at the hearing such injunction be made permanent for the balance of the reemployment year aforesaid.

(d) That petitioners recover of respondent the fees and costs of the United States herein, for its benefit. [5]

(e) That petitioners have all such other and further relief as may be just and proper in the premises, and that they have general relief.

JAMES M. CARTER,  
United States Attorney.

RONALD WALKER,  
Assistant U. S. Attorney,  
Chief of Civil Division.

By /s/ JAMES C. R. McCALL, JR.,  
Assistant U. S. Attorney,  
Attorneys for Petitioner.

State of California,  
County of Los Angeles—ss.

Fred Elia Iob, makes oath that the statements made in the foregoing Petition as of his own knowledge are true, that those made on information and belief, he believes to be true, and that the entire Petition is true to the best of his knowledge, information and belief.

/s/ FRED ELIA IOB,  
Petitioner.

Subscribed and sworn to before me this 6th day of Jan., 1947.

EDMUND L. SMITH,  
Clerk, United States District Court, Southern District of California.

[Seal] /s/ THEODORE HOCKE,  
Deputy. [7]

State of California,  
County of Los Angeles—ss.

Samuel M. Dobbs, makes oath that the statements made in the foregoing Petition as of his own knowledge are true, that those made on information and belief, he believes to be true, and that the entire Petition is true to the best of his knowledge, information and belief.

/s/ SAMUEL M. DOBBS,  
Petitioner.

Subscribed and sworn to before me this 11th day  
of January, 1947.

[Seal] /s/ DANTE SPINOGLIO,  
Notary Public.

My Commission Expires June 20, 1949. [8]

State of California,  
County of Los Angeles—ss.

Waldemar F. Ulrich makes oath that the statements made in the foregoing Petition as of his own knowledge are true, that those made on information and belief, he believes to be true, and that the entire Petition is true to the best of his knowledge, information and belief.

/s/ WALDEMAR F. ULLRICH,  
Petitioner.



Subscribed and sworn to before me this 6th day of January, 1947.

EDMUND L. SMITH,  
Clerk, United States District Court, Southern District of California.

[Seal]     /s/ EDW. F. DREW,  
Deputy.

Complaint Amended May 28, 1947.

[Endorsed]: Filed Jan. 23, 1947. [9]

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[Title of District Court and Cause.]

ANSWER OF RESPONDENT LOS ANGELES  
BREWING CO., TO PETITIONER'S PETITION

Comes Now the respondent, Los Angeles Brewing Co., and for answer to Petition herein admits, denies, and alleges as follows:

I.

Respondent admits the allegations of paragraph II of said Petition, and in connection therewith does further allege that it does ship malt beverage products, as well as alcoholic beverages and wines, to various adjacent states and territories, and does in addition purchase various materials, goods, wares, and merchandise without the State of California, which said materials goods, wares, and merchandise are shipped to the respondent with in the State of

California and products of respondent are shipped out of the said State of California.

## II.

Answering paragraph III of the within Petition, respondent admits each and every allegation therein contained, [10] save and except respondent denies that each petitioner was reemployed by reason of any requirement of law, and in connection therewith does allege that said petitioners, or each of them, were reemployed without reference to any requirement of law, and that each of them were referred to respondent by the particular labor union with which the petitioners were then affiliated and were cleared for reemployment by said labor unions, and did reenter respondent's employment in the year 1946 after the honorable discharge of each petitioner from the United States armed services.

## III.

Answering paragraph IV of the within petition, respondent denies generally and specifically each and every allegation therein contained, and the whole thereof.

Further answering said paragraph IV, respondent alleges that the said named petitioners, to wit, Samuel M. Dobbs and Waldemar F. Ullrich, did on or about September 21, 1946, of their own volition voluntarily terminate their employment by and with the respondent, and that said named petitioners have not thereafter applied for re-entrance to respondent's employment.



## IV.

Answering paragraph V of the within petition, respondent denies generally and specifically each and every allegation therein contained, except so much thereof as may be construed to allege that since November 25, 1946, respondent has declined and refused to accept as an employee said Fred E. Iob by reason of said petitioner's refusal to comply with the terms and conditions of that certain Agreement, a copy of which is attached hereto, made a part hereof, and marked Exhibit "A," particularly Section 1(a) thereof.

Further answering said paragraph V, respondent alleges that it did make and enter into a certain collective bargaining agreement (said Exhibit "A") governing wages, rates of pay, hours of labor, and other conditions of employment on the 27th day of [11] July, 1946, with the Joint Local Executive Board of California, a labor union, under and pursuant to the provisions of 49 U. S. Stats. 452, 29 U.S.C.A., 151, Section 1, et seq., which said Agreement has been in full force and effect from July 27, 1946, and still continues in effect in accordance with the terms thereof.

Further answering said paragraph V of the within petition, respondent is informed and believes, and upon such information and belief alleges, that said petitioner Fred E. Iob has on more than one occasion prior to said September 9, 1946, and November 25, 1946, been offered by the representative of said Joint Local Executive Board of California, and

Local Union No. 893 of said Joint Local Executive Board of California, the opportunity of joining and becoming a member of said Local Union No. 893.

## V.

Answering paragraph VI of the within petition, respondent denies generally and specifically each and every allegation therein contained, except as hereafter alleged, and respondent alleges that the statistical facts concerning each individual petitioners' employment are as follows:

	Samuel M. Dobbs	Waldemar F. Ulrich	Fred E. Iob
Position held .....	Bottler	Bottler	Brewer
Date first entered employment .....	July 29, 1937	Feb., 1937	Mar. 8, 1943
Date of termination to enter U. S. Armed forces .....	Jan. 17, 1942	May 9, 1942	Feb. 24, 1945
Date of entry on active duty in U.S. Armed forces .....	Jan. 9, 1942	May 9, 1942	Mar. 9, 1945
Date of discharge therefrom .....	Nov. 30, 1945	Feb. 8, 1946	July 20, 1946
Date of reentry into respondent's em- ployment .....	Jan. 2, 1946	Apr. 29, 1946	(1) Sept. 9, 1946
Hourly Wage Rate Respondent's (Exhibit "A") .....	\$1.36	\$1.36	\$1.48
Weekly Wage Rate (Respondent's Exhibit "A") .....	\$54.50	\$54.50	\$59.00
Termination of Employment .....	Sept. 21, 1946	Sept. 21, 1946	(1) Sept. 17, 1946 (2) Nov. 25, 1946
Weekly loss of wages so caused .....	None	None	None
Loss of wages to date..	None	None	None
Weekly rate of future loss .....	None	None	None

VI.

Answering paragraph VII of the within petition, respondent denies each and every all and singular the allegations therein contained, except so much of said paragraph as may be construed to allege that respondent insisted that it could only conduct its business and have in its employ in the departments covered by Exhibit "A" those persons who had complied with the provisions of said Exhibit "A."

VII.

Answering paragraph VIII of the within petition, respondent denies each and every all and singular the allegations therein contained, except insofar as Exhibit "A" may provide for a system or practice of seniority.

Wherefore, respondent respectfully prays that petitioners take nothing by their petition and that the same be dismissed, and that respondent have judgment for its costs of suit herein incurred.

HANNA AND MORTON and  
JAMES M. McROBERTS.

By /s/ JAMES M. McROBERTS,  
Attorneys for Respondent.

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EXHIBIT "A"

CONTRACT

Between Joint Local Executive Board of California Comprising Bottlers Local Union No. 896, Brewers, Maltsters & Yeast Workers Local Union No. 893,

Brewery Shipping; Receiving Clerks and Checkers Local Union No. 884; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 203, Affiliated with International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America, Effective July 28, 1946.

### AGREEMENT

Whereas, the Joint Local Executive Board of California, Locals Nos. 893, 203, 896, and 884 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, state and allege that as of the date hereof, said joint Local Executive Board of California is the designated and selected representative of the employees in the brewing, bottling, delivery, shipping and receiving departments of all the breweries of Southern California, for the purposes of collective bargaining with respect to rates of pay, wages, hours of labor and other conditions of employment, which said specific statement and allegation constitutes the material consideration to the breweries herein.

Now, Therefore, after presentation of evidence of such representation and in consideration of the mutual promises herein contained: it is agreed:

Section 1. (a) Only members in good standing who are members of Local Union No. 893 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be employed as brewers in the brewing department, in-

cluding all basements, platforms and wash houses used in connection with the operating of the brewing department.

(b) Only members in good standing who are members of Bottlers' Local Union No. 896 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be employed as bottlers in the bottling department at the brewery, including all basements, platforms, storage, and yards used in connection [14] with the operation of the bottling department in positions where bottlers are now employed, or in those branches where employer may require the employment of a steady crew to perform bottlers' work.

(c) Only members in good standing, who are members of Local Union No. 203 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be employed as shipping drivers and helpers, special delivery drivers and helpers, bottle route drivers and helpers, keg beer drivers and helpers, within jurisdiction of Local 203.

(d) Only members in good standing who are members of Local Union No. 884 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be employed, wherever now employed as checkers and shipping clerks in the shipping departments and receiving departments conducted at brewery premises, or in any warehouses adjacent thereto.

(e) Brewmasters and assistant brewmasters, and



foremen who perform no manual labor and employees in managerial capacity of any kind or nature shall not be covered by any term or provision of this contract, and may be employed regardless of Union membership.

(f) This agreement shall cover only employees who perform their services principally within the State of California for the respective breweries.

(g) Provided, however, in those cases in which the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America permit mixed branches, i.e., branches in which members who normally would belong to Local Unions Nos. 893, 896, 884 and 203 but are members [15] of a mixed branch of any of the said local unions, only members in good standing who are members of such mixed branch of any of said local unions shall be employed in the capacities hereinabove set out; and provided, further, that all unloading and loading of railroad cars on or within two blocks of the brewery premises shall be done by members of one of the aforesaid local unions or branches thereof.

Section 2. All employees shall be obtained and hired through the respective locals and branches thereof to which the employees in said department are required to belong; provided, however, that should said respective locals be unable to provide satisfactory employees, then and in that event, said employees may be obtained from any source; and provided further, however, that said employees so obtained through other sources shall be required,

before commencing work, to apply for a permit card from the respective locals to which the employees in said department belong.

Section 3. No employee shall be discharged or discriminated against for upholding union principles, nor may any employee be discriminated against or discharged who engages in any work for and under the instructions of said Local Union 893, 203, 896 and 884, or any of the branches of same, or either or all of them, and said employees shall be permitted to take such time as may be necessary to discharge these duties, or any of them; provided, however, that said employee shall be paid no compensation whatsoever by the employer for said time devoted to the performance of said duties, or any of them. Members of the respective branches shall not be permitted to handle or bottle any products of any brewery or any malt house that is declared "unfair" by the [16] International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, it being understood that goods on hand or in transit are excepted.

Section 4. (a) Sickness shall be no cause for discharge, and any employee who shall cease work because of sickness, provided that such sickness does not last longer than six (6) months, and also provided that said employee is capable of performing his usual duties, shall be upon recovery entitled to and receive his former position. The employer shall have the right to call in temporary help to

discharge the duties of an employee who is on the sick or injured list. Upon the return of such regular employee, employer shall be entitled to discharge such temporary employee as may have been fulfilling the duties of said sick or injured employee regardless of the duration of such sickness or injury. Injuries received through accident in performance of duties shall be no cause for discharge, and an employee injured through accident shall be entitled to his former position upon recovery, irrespective of the period of time elapsing between injury and recovery, provided said employee be capable of performing his usual duties.

(b) In the case of any employee inducted into the land or naval forces of the United States of America for training and service under the Selective Training and Service Act of 1940, if such person shall have left his position, other than a temporary position, in order to perform such training and service, and shall have received the certificate prescribed by said Act, and if he is still qualified to perform the duties of such position and makes application for employment within sixty (60) days after he is relieved from such training and service, the employer shall restore such person [17] to such position or to a position of like seniority, status and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so. Any person restored to a position in accordance herewith shall be considered as having been on furlough or leave of absence during his pe-



riod of training and service in the land or naval forces and when so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause one year after such restoration. Upon the re-instatement of any such person to his position, employer shall be permitted to discharge such employee as such returned service man shall displace.

Section 5. (a) The employer shall install all legally required safety appliances and first aid materials to insure employees against danger to health, life, and limb, and shall furnish a sanitary wash-room and dressing room with lockers, or the equivalent thereof:

(b) The employees of bottling departments shall be furnished, free of charge, the use of a rubber suit and boots for the purpose of cleaning the shops and equipment, and the employees of brewing departments shall be furnished the use of rubber suits when cleaning tanks with caustic soda.

(c) All things being equal, union made materials and machinery shall be given preference.

Section 7. Union labels of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen [18] and Helpers of America, shall be supplied to all breweries that comply with this agreement.

Section 8. Only one controlling owner, controlling shareholder, or bona fide partner shall perform any of the work in any of the departments covered by this contract. Nothing, however, in this agreement shall be considered as interfering with the rights of any foreman or supervisor performing work not covered by this contract, or to look after machinery, or assist at short intervals whenever a man is needed; provided, however, that immediate application is made to the proper local union for a man to fill such vacancy and do such work.

Section 9. No employee shall have his wages reduced or his hours of labor increased by reason of the signing of this agreement. Any commission paid is not to be considered wages.

Section 10. (a) All work done in addition to the regular hours of daily work shall be considered and paid for as overtime. Overtime must be paid for and shall not be taken out nor balanced by lay-off.

(b) All overtime, Sunday and holiday work shall be paid for at the rate of time and one-half, it being understood that a work day or shift starting on a straight pay basis shall be completed as such.

(c) The minimum weekly wages specified hereinafter are for a full week's work, as herein provided, and it is definitely understood that on days on which no work is performed for any reason, including holidays, an employee shall receive no compensation whatsoever.

Section 11. Differences that may arise as to the

interpretation of this contract shall be referred [19] to a Board of Arbitration, consisting of two members of the Union and two representatives of the employer firm; said Board shall meet within two weeks from the time that a demand for arbitration has been made. Should these four fail to agree, they shall, together elect a fifth disinterested party. The decision of the majority of the whole shall be final and binding upon both parties.

There shall be no stoppage of work, either on the part of the employer or the employees, pending said settlement of said dispute as hereinabove provided, and providing further, that said work shall continue in the manner in which it had previous to the arising of the dispute, and that such work shall be performed, or such payments made as had been done or paid previous to the arising of the dispute, it being the considered and deliberate intention of the union and the employers to avoid in so far as possible the stoppage of the work.

Section 12. There shall be no apprentices or learners in any department except the brewing, malting and syrup departments.

Section 13. Employees discharged for embezzling employer's money or property shall be dropped from the membership roll of the union to which they belong, after having had a fair trial by said union and having been found guilty. Pilfering of cases or inducing bottlers or loaders to give drivers extra bottles shall be regarded as embezzlement and dealt with as above set out. The furnishing of a surety

bond against embezzlement shall be left to the discretion of the employer; provided, however, that said employer shall be required to pay the premium on said bond, and provided further, that said bond shall be in no [20] way construed as affecting said employee's obligation to said employee's union.

Section 14. In the event that an employee from whom a surety bond shall be required by the employer cannot provide a Five Hundred Dollar (\$500.00) cash bond, or cannot obtain from or qualify with a representative and regularly established surety company doing business in California the requisite surety bond, the employer may, at his option, refuse to accept such person as an employee.

Section 15. Any literature distributed by an employee of the brewery without the consent of the brewery will give the brewery the right to discharge immediately any such employee, provided that such literature is distributed during working hours.

Any employee who makes any derogatory remarks which shall be proven against him, about employer, its products or officers, shall, at the option of the employer, be immediately discharged.

Section 16. The employer shall have the right to discharge any employee who has, to the conviction of the employer, failed to perform his duty satisfactorily. Such unsatisfactory employee shall be spoken to by the employer. At the same time the shop delegate of the union shall be notified of the

employee's offense, and at the second offense such employee may be discharged without further notice.

Section 17. This contract shall be subject to such conditions as may be included in any federal or state legislation passed in the future.

Section 18. Any and all customers or their employees, or agents of employer's products, or [21] public carriers, shall have the right to call at employer's platform to receive their orders, and the same shall be delivered to them subject to present conditions relative to distributors.

Section 19. The employer shall, at its option, have the privilege of loading or unloading all trucks with brewers, bottlers, or drivers.

Section 20. The employer firms shall at all times have the entire right of selection and placing of men or the rearrangement of employees, regardless of seniority.

Section 21. Nothing in this contract shall be considered as interfering with the rights of any foreman or supervisor to perform work not covered by this contract, or in cases of emergency, to look after machinery or assist at short intervals.

Section 22. No employees shall be removed by the union from their place of employment to perform work in another place of employment without first obtaining the permission of the employer; provided that temporary employees may be removed upon the conclusion of the regular work week, upon notice to said employer.



Section 23. All employees, upon completion of forty-five (45) weeks of continuous employment for the same employer within a twelve months consecutive period shall be entitled to one week's vacation with full pay. Employees shall be allowed not in excess of sixty (60) calendar days on account of illness or accident during said twelve months period, and the same shall not constitute a violation of the provisions of this paragraph. Provided, however, that said vacation period shall be taken at a time to be set by the employer, and provided further, that employer shall in no event be required to replace employees on vacation. [22]

Each such employee after five (5) consecutive years of continuous employment with the same employer shall during continuous service thereafter with such employer be entitled to two (2) weeks' vacation with pay at the end of any forty-five (45) weeks worked within any consecutive twenty-four (24) months. An employee shall become entitled to his vacation in no period short of fifty-two (52) weeks and no time of employment worked in excess of forty-five (45) weeks in any consecutive fifty-two weeks of employment can be carried over as a credit to the next vacation.

Forty (40) working hours or more worked in any one week for the same employer shall constitute a week's work when computing total weeks worked and eligibility of employee to a vacation. Vacations shall be taken at a time stipulated by the employer who shall not be required to employ additional help to replace employees on vacation.

These employees receive no bonus other than some employers pay a Christmas bonus which is paid at employer's option and subject to discontinuance. This bonus is a gratuity and no part of salary.

In certain breweries some employees as first or lead men receive a monthly bonus of \$10 or \$20 over base straight time pay.

Employers pay time and one-half regular base pay after eight hours worked per day and in accordance with Executive Order 9240.

Section 24. The loading and unloading of trucks driven by an employee of a brewery from a platform or space mutually agreed upon shall be considered driver's work. [23]

Section 25. The following days shall be considered holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas.

Section 26. It is further agreed that this contract shall not be altered, changed, or deviated from except with the written approval of the Joint Executive Board of the Unions.

Section 26. (a) During working hours employees shall be entitled to good beer at times to be arranged by mutual agreement, not less than four (4) times per day.

### Brewers

Section 27. Eight (8) consecutive hours, exclusive of an interval of one (1) hour for meals, shall constitute a day's work, and five (5) days (respec-

tively forty (40) hours) shall constitute a week's work, with the exception of Saturday, when five (5) hours and twenty (20) minutes shall constitute a day's work. The regular working day shall not commence before seven (7) A.M., and shall not continue after six (6) P.M. All work done before seven (7) A.M. and after six (6) P.M. shall be considered overtime; provided, however, that all night men shall work eight (8) consecutive hours at regular wages, twenty (20) minutes to be allowed for lunch, but the time at which this work shall commence shall be left to a mutual understanding between the employer and the employee or employees concerned.

Section 28. One apprentice shall be permitted in each brewery employing not less than five (5) members of Local Union No. 893. In case that the number of men employed shall equal thirty (30) members, then a second apprentice may be employed, and with forty (40) members, a third one, [24] and one to every additional thirty (30). Apprentices shall be governed by the rules of the union and shall be instructed in all branches of the trade for a term of not less than two (2) years. Apprentices may work overtime, provided the shift on which they are employed is working overtime. They shall not be less than eighteen (18) nor more than twenty-five (25) years of age at the beginning of their terms of apprenticeship. Apprentices must be accepted by the union as members before starting their apprenticeship.

Section 29. It is agreed that no new or additional



apprentices may be employed in brewing, malthouse, and syrup departments, as long as the employees in said departments are being laid off in rotation, and as long as five (5) per cent of the membership of Local Union 893, Branch No. 4, Los Angeles, permitted to work in said departments are on the out of work list.

Section 30. Provided further, however, that sons of brewery and malthouse proprietors may be employed as apprentices at any time in breweries, malt houses and syrup houses controlled by their parents, so long as they do not replace a member of Local Union No. 893, Branch No. 4.

Section 31. The employer shall have the right of selection from the out of work list maintained at the office of the said local union where employment is available on a permanent basis. Provided further, that seniority on the out of work list shall prevail as to temporary employment, save and except the employer shall not be obligated to accept into his employment any temporary employees unless such employees as may be designated by the union are qualified and physically capable of performing the employment required.

Section 32. (a) No man shall be called to do [25] emergency work for less than four (4) hours, and said time shall be paid for at the rate of time and one-half, if performed after completion of the regular day or week's work. The foregoing does not apply to work recurrent in the course of regular brewery operations. Any work performed on holi-

days shall be paid for at the rate of time and one-half, and all overtime shall be equally divided where possible and where the men available for such overtime are equally qualified.

(b) It shall be understood that there shall be no overtime work when the force is being reduced, except in emergencies. This is to include working foremen, but shall not prevent first men and foremen from coming in on Saturdays, Sundays, and holidays to perform their regular work.

Section 33. The wages paid in all breweries and syrup departments shall not be less than Fifty-Nine and No/100 (\$59.00) Dollars per week for the first shift. Sixty-One and No/100 (\$61.00) Dollars for the second shift and Sixty-Three and No/100 (\$63.00) Dollars for the third shift. The wages paid to apprentices shall not be less than Forty-Four and No/100 (\$44.00) Dollars per week, for the first shift, for the first year. Forty-six and No/100 (\$46.00) Dollars for the second shift and Forty-Eight and No/100 (\$48.00) Dollars for the third shift. Forty-Six and No/100 (\$46.00) Dollars per week for the first shift for the second year, Forty-Eight and No/100 (\$48.00) Dollars for the second shift and Fifty and No/100 (\$50.00) Dollars for the third shift. The wages shall be paid in full, weekly, in lawful money of the United States.

Section 34. Should it become necessary during the dull season to lessen the working force, the men may be laid off in rotation, in an impartial manner, for not longer than one week at a time, and it is ex-

pressly understood that there [26] should be no laying off for any fractional part of a day or week. The first men and working foremen and apprentices are included in this lay-off system, arranged by employer and shop steward, and the local union.

Section 35. When men are varnishing tanks or engaging in work with explosive or inflammable materials within closed tanks, the men doing this work must have a watchman on the outside of the tank at all times, and safety apparatus shall be inspected and placed in perfect condition before the men go into the tank to perform the above work.

Section 36. A brewery also has the right to employ extra workmen during the months from April 1st to October 30th. Any man working after the 30th day of October shall be considered a steady employee.

Section 37. No man shall be forced to pile full half barrels two (2) high, unassisted.

Section 38. During working hours employees shall be entitled to good beer at times to be arranged by mutual agreement, not less than four (4) times per day.

### Bottlers

Section 39. Eight (8) consecutive hours, exclusive of an interval of one hour for meals, shall constitute a regular day's work, and forty (40) hours, Monday through Friday, shall constitute a week's work. Provided, however, that employees perform-

ing work on Saturday to complete a full day's work may work six hours and forty minutes to complete a regular week's work, and such Saturday work shall be compensated for at regular wages. Any bottling work performed on Saturdays [27] shall be considered and paid for as overtime work. The regular working day for the day crew, including Saturday work, shall not commence before 7:00 a.m. and shall not continue after 6:00 p.m. If two (2) crews are employed on one unit of machinery, the regular working day of the night crew shall be eight (8) hours and shall commence at the conclusion of the working day of the day crew, providing no overtime is worked. It shall be optional, however, to arrange the hours of the night crew to the mutual satisfaction of the employer and employees. All work done in addition to the regular eight (8) hours daily work and forty (40) hours weekly work shall be considered and paid for as overtime. It shall be permissible to have men report for work before 7:00 a.m. to load out drivers on special trips or long hauls. Proprietor or foreman shall have the right of determining the number of men required to work such overtime, but where the full crew is not working overtime, no bottling or bottle washing shall be done. All overtime shall be divided, however, equally among the men employed in the shops.

All plants shall be permitted to work overtime, whether operating steadily or not. Proprietors or foremen shall have the right of determining the

number of men required to work such overtime, and all overtime shall be equally divided among the members of the shop.

Section 40. Good employer's beer shall be furnished to the employees free of charge, once during the morning shift, at noon, in the middle of the afternoon shift, and at quitting time.

Section 41. It is agreed that the firms will operate all available lines of bottling machinery during the day shifts before the establishment of night shifts, providing however, that where certain [28] lines are incapable of filling particular types of bottles, or where because of superannuated equipment a material divergency of production would result, this provision shall not apply.

Section 42. Should dullness of trade necessitate a lay-off, the employees shall be laid off in an impartial manner, in rotation, no fractional part of a day, nor more than one day per week, excepting in case of break-down. If a breakdown occurs in the forenoon, the men shall work the morning out. If a breakdown occurs in the afternoon, the men shall work the day out. It is agreed first crew may work four (4) consecutive days in any one week.

It is agreed that where extra crews are required for temporary work, the employer may work such crews four (4) consecutive days, excepting Saturday or Sunday, within two (2) weeks period, provided that existing crews are working five (5) days per week.



Should a reduction of the working force become necessary to comply with this section as to the minimum crew and time worked, the first men hired shall be the last to be laid off; further, if help is again called, the last man or men in point of service who were laid off shall be the first to be rehired. It is agreed that all employees shall receive equal chances at any work performed on days that the shop is not bottling, whether such work is considered bottlers' work or not. The loading and unloading of cars of beer, bottle-house supplies and all work performed on same, shall be considered bottlers' work, providing such car is located on the bottlehouse premises; it being understood, however, that loose bottles in carload lots shall be crated and handled by union bottlers, regardless of where such car may be spotted. Employer shall notify [29] employees twelve (12) hours or more before time in case of layoff.

Section 43. Temporary help may be employed, but in case of dullness of business such temporary help shall be dispensed with.

Section 44. The minimum weekly wage shall not be less than Fifty-Four Dollars and Fifty Cents (\$54.50) per week for the first shift. Fifty-Six Dollars and Fifty Cents (\$56.50) for the second shift and Fifty-Eight Dollars and Fifty Cents (\$58.50) for the third shift. Wages to be paid in full, weekly, in lawful money of the United States of America.

Section 45. No employee shall be required to change shifts during the calendar work week, unless

such employee shall have had a period of at least twelve (12) hours between the conclusion of the last shift worked and the commencing of a new or different shift to which he may be assigned. Provided that for overtime work, any man available who has not worked the preceding twelve (12) hours may be used. It shall be permissible in any event to change employee or employee's shift at the end of each work week. It is understood and agreed that where it is necessary in emergency cases to load or unload trucks after the Saturday closing hour, the employer shall have the right to use any man or men about the premises who is available for such emergency work. It is also agreed that should an emergency arise after the closing hour in the bottling plant, brewery, or shipping rooms, on days other than Saturdays, the employer reserves the right to have the same privilege as is specified, after the closing hours on Saturday.

Section 46. All holiday, Sunday and overtime work shall be paid for at the rate of time and one-half. [30]

Section 47. Foremen or assistant foremen shall do no work in shops unless they are members of the union. Nothing, however, in this agreement shall be construed as to interfere with the right of the foremen to look after machinery or assist at short intervals whenever a man is lacking, providing in such case application is made to the union for a man to fill the vacancy.



### Drivers

Section 48. Five (5) consecutive days out of each calendar week, Monday through Friday, shall constitute a regular week's work and the regular work days shall be eight (8) hours per day and forty (40) hours in all shall constitute a regular work week, except that employers shall have the right to employ so-called "hot-shots" who will work Tuesday through Saturday. Saturday to be a premium day, except for "hot-shots," and time and one-half shall be paid. A driver called in on Saturday, who is not on the regular payroll, will be paid at the rate of time and one-half, even though he may be operating as a "hot-shot." All Sunday work shall be paid for at the rate of time and one-half.

All time worked in addition to the maximum hours provided as constituting a regular work day, or in excess of forty (40) hours per week, shall be considered as overtime and compensated for at the rate of time and one-half. The regular work day shall not commence before seven o'clock a.m. and shall not continue after six o'clock p.m., provided, however, that special drivers on special trips shall be permitted to start at any time and shall work a regular day at regular wages. The regular day's work of eight (8) hours shall be exclusive of a period of twenty (20) minutes for settling up. In the event that more than twenty (20) minutes is required for settling-up, [31] all settling-up time in excess of that included in the regular daily work

day shall be compensated for at the overtime rate computed to the nearest half hour.

Section 49. On Labor Day keg beer drivers and helpers and bottle beer drivers and helpers will be allowed to deliver for three (3) hours only, commencing at seven (7) a.m. and discontinuing at ten (10) a.m., and shall be paid at the rate of time and one-half. Except that beer may be delivered to picnics when orders are placed for forty-eight (48) hours previously to delivery date.

Section 50. The minimum scale of wages shall not be less than \$58.00 per week for keg beer drivers, bottle beer drivers, and shipping drivers and special drivers, and \$55.00 per week for helpers on keg beer trucks, bottle beer trucks and shipping trucks, and night loaders shall be paid \$60.00 for second shift—wages to be paid in full, weekly, in lawful money of the United States of America.

Section 51. Drivers, upon authorization of credit department of brewery, having left beer on credit shall receive receipt for same, and this being given to his employer, shall be considered sufficient sanction for the same and he shall not be held responsible for payment thereafter.

Section 52. Beer drivers and helpers may be laid off not more than one (1) week at a time, impartially and in rotation.

Section 53. Extra shipping drivers and helpers shall be furnished by the union for the purpose of

getting out rush orders. Such extra help can be dispensed with when the work for which they have been engaged is finished. Extra drivers or [32] regular drivers and helpers who have been temporarily laid off shall not be called into service for a fractional part of a day unless they be given a full day's pay for the same. If a rush order or an unavoidable accumulation of empties require more shipping facilities than a brewery or bottling establishment has vehicles to handle, then in that case draying firms may be employed to complete such work.

Section 54. Employing firms desiring their drivers or helpers to wear uniforms advertising their products or firm names, shall arrange the cost of same by mutual agreement between the firms and the union representatives; provided, however, that the cost shall be borne equally by employer and employee, save and except the share to be borne by employee shall in no event exceed the sum of Three Dollars (\$3.00) in all for each uniform. In the event of an overage, the same shall be borne by the employer.

Men shall report for work clean and presentably dressed, ready to meet the public or pass public inspection.

Section 55. All chauffeurs and helpers shall be at their post of duty at the time designated.

Section 56. Keg and bottle beer may be hauled in the same truck.

## Checkers

Section 1. Only members in good standing who are members of Local Union No. 884 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be employed as checkers and shipping clerks in the shipping department and receiving department, having to do with the loading and unloading of trucks, handling of malt beverage [33] products at platforms maintained for such purposes by the employer. The employer shall have the right of selection of employees to perform such work from any source. Provided, however, if such employees be not members of the Union at the time of commencement of the employment, they shall be required before commencing work to apply for a permit card from said Local Union No. 884.

Section 2. Five consecutive days out of each calendar week, except Sunday, shall constitute a regular week's work, and the regular work day shall be eight hours per day, exclusive of one hour for meals, and forty hours in all shall constitute a regular work week. The regular work week may commence, at the option of the employer, on either Monday or Tuesday of each week, and in such cases where a holiday or a day on which no beer can be delivered by reason of local, state or federal statute, then such days shall constitute the day off other than Sunday, and eight hours may be worked on Saturday or Monday at regular wages, where nec-

essary, to complete the regular work week of forty hours. The regular work day shall not commence before 7:00 a.m. and shall not continue after 6:00 p.m. A second shift may be employed at the discretion of the employer, the starting time to be determined by the necessity of business, but work performed between the hours of 6 p.m. and 7 a.m. shall be compensated for at an additional rate of five cents per hour for second shift in addition to the regular hourly rate, based upon the weekly wage paid to such employee and ten cents per hour for third shift. All work performed after eight consecutive hours, exclusive of one hour for meals, shall be paid for at the rate of time and one-half and time off shall not be accepted as a substitute. The employer shall have the right to determine the number of [34] men to work overtime. Overtime shall be divided among the men as equitably as possible. However, it is permissible to rotate men irregularly in cases where special work is to be done for which certain men are better qualified or more adaptable.

All wages shall be paid weekly in lawful money of the United States, as follows:

For permanent receiving and shipping clerks, a minimum weekly wage of not less than \$50.50 per week for the first shift; for the second shift \$52.50 and for the third shift \$54.50.

Section 3. Should dullness of trade necessitate a layoff, the employees shall be laid off in an impartial way, in rotation, but no one shall be laid off longer than one week, nor less than one day at a



time. Should permanent reduction of the working force become necessary, employees shall be laid off impartially according to seniority, all things being equal.

Section 4. If during the busy season it is necessary to employ extra help, such help shall be employed through Local No. 884, under the permit card system. In case of layoff or reduction of working force, the permit card men shall be laid off before Union card men.

This contract shall be in full force and effect from date to May 1, 1947.

In Witness Whereof, the parties have hereunto set their hands and seals by their respective representatives, this 28th day of July, 1946.

This contract applies only to breweries of Southern California.

For the Employees:

JOINT LOCAL EXECUTIVE BOARD OF  
CALIFORNIA.

By MARTIN CHRISTEN,  
Secretary. [35]

For the Employer:

CALIFORNIA STATE BREWERS INSTITUTE  
FOR INSTITUTE MEMBERS IN  
SOUTHERN CALIFORNIA.

JAMES G. HAMILTON,  
Secretary.



FOR LOS ANGELES BREWING CO. AND  
GRACE BROS. BREWING, LTD.

By JAMES M. McROBERTS.

The contract of July 28, 1946, this day executed by James G. Hamilton as secretary for the California State Brewers Institute for brewery members of the Institute in Southern California with the Joint Local Executive Board of California for Locals 884, 893, 396, 888 and 203 is executed for and on behalf of the Bohemian Distributing Company, a corporation, in so far as such contract is applicable to driver, bottling and checker employees of said corporation, who handle malt beverages.

Dated July 29, 1946.

BOHEMIAN DISTRIBUTING COMPANY,  
By JAMES G. HAMILTON. [36]

State of California,  
County of Los Angeles—ss.

Charles J. Lick, 'being by me first duly sworn, deposes and says: that he is an officer, to wit: Vice-President, of respondent, Los Angeles Brewing Co., a corporation, and makes this verification on its behalf as such duly authorized officer; that he has read the foregoing Answer of Respondent to Petitioners' Petition, and knows the contents thereof; and that the same is true of his own knowledge,

except as to the matters which are therein stated on his information or belief, and as to those matters that he believes to be true.

/s/ CHARLES J. LICK.

Subscribed and Sworn to before me this 17th day of February, 1947.

[Seal]      /s/ LAURA TEETER,  
Notary Public in and for said  
County and State.

Received copy of the within Answer this 18th day of February, 1947.

/s/ JAMES M. CARTER,  
U. S. Attorney,

By /s/ GERTRUDE M. JOHNSON.

[Endorsed]: Filed Feb. 18, 1947.

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At a stated term, to wit: The February Term. A. D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday, the 1st day of April, in the year of our Lord one thousand nine hundred and forty-seven.

Present:

The Honorable: Paul J. McCormick, District Judge.

No. 6322-M Civil

FRED ILIA IOB, et al.,

plaintiffs,

vs.

LOS ANGELES BREWING CO., INC., etc.,  
Defendant.

This Cause coming on for trial; James C. R. McCall, Jr., Assistant U. S. Attorney, appearing as counsel for the plaintiffs; James M. McRoberts, Esq., appearing as counsel for the defendant; and both sides answering ready, it is ordered to proceed. Counsel stipulate to certain facts. Plaintiffs' Exhibits 1, 2, and 3 are received in evidence.

Fred Ilia Iob and Walker F. Ullrich, respectively, are called, sworn, and testify for the plaintiffs. Counsel stipulate as to testimony of Plaintiff Dobbs. Geo. E. Cowdrey, B. H. Koenig, and Anna M. Peukert, respectively, are called, sworn, and testify for the plaintiffs.

At 12:07 P.M. court recesses herein to 8 P.M. at 2:05 P.M. court reconvenes and all being present as before, the plaintiffs rest.

Attorneys McRoberts moves for dismissal, states the grounds, and argues. The said motion is denied without prejudice.

Robert Ziegler, Elmer Schaffer, and Anton J. Ziegler, respectively, are called, sworn, and testify for the defendant. Defendant's Exhibits A and B are received in evidence. John Hoff is called,

sworn, and testifies for the defendant. The defendant rests. At 3:30 P.M. court recesses.

At 3:35 P.M. court reconvenes herein and all being present as before, Samuel M. Dobbs is called, sworn, and testifies for the plaintiffs. [38]

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At a stated term, to wit: The February Term. A. D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday, the 2nd day of April, in the years of our Lord one thousand nine hundred and forty-seven.

Present:

The Honorable: Paul J. McCormick, District Judge.

No. 6322-M Civil

FRED ILIA IOB, et al.,

Plaintiffs,

vs.

LOS ANGELES BREWING CO., INC., etc.,

Defendant.

This cause coming on for further trial; James C. R. McCall, Jr., Assistant U. S. Attorney, appearing as counsel for the plaintiffs; James M. McRoberts, Esq., appearing as counsel for the de-

fendant; Attorney McCall argues to the Court for the petitioner. The Court discusses certain matters with Attorney McCall and makes a statement. Attorney McCall argues further. The Court and Attorney McCall discuss certain matters further.

At 10:38 A.M. Attorney McRoberts argues. The Court and counsel generally discuss the questions involved in the case. The Court makes a statement that it is prepared to adopt the statements made from the bench as the findings in this case to deny the injunctive relief and to hold that because of the language of the Statute in sub-section (b) of Sec. 8 of the S.T. & S.A. (Title 50 App. U.S.A. Sec. 388) the injunction should not issue and that if in order to place the petitioners in the positions which they need at the time of their going in the military service, it is necessary that some equitable process of injunction or restraining order or mandatory edict should be issued by this Court, the circumstances shown by the evidence and the employer's circumstances as shown by the evidence having been changed since the workers' return so as to **make it** impossible and unreasonable by this Court by its injunctive process to place them in their positions. Counsel will prepare findings.

Witnesses Ullrich, Koenig, and Cowdrey, respectively, heretofore sworn, testify further. Both sides rest.

It is ordered that the cause is hereby continued to April 2, 1947, at 10 A.M., for further trial. [39]

[Title of District Court and Cause.]

PETITIONERS' MOTION FOR NEW TRIAL  
WITH LEAVE TO ADD PARTIES

Petitioners Iob, Dobbs and Ullrich move the Court for a new trial under Rule 59(a,d) of the F.R.P.C., with leave to amend the petition so as to add the following as additional parties respondent, to wit:

Bottlers Local Union No. 896 and Brewers, Maltsters & Yeast Workers Local Union No. 893, both local labor unions of the International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America, an unincorporated international labor union: Joint Local Executive Board of California, an unincorporated association of local labor unions affiliated with said international union, which includes said local labor unions in its membership; and Walter Eckberg, president, and Anthony Zeigler, secretary, officers of said local union No. 896, and Thomas Vacca, president and Elmer Schaffer, secretary, officers of said local union No. 893.

Petitioners also move to defer consideration of proposed findings of fact and conclusions of law, and judgment, until after such new trial. [42]

The grounds of the motion are:

1. That since the trial of this case and the oral announcement of the Court's opinion on April 1, 1947, the Supreme Court of the United States, in the case *Trailmobile Co. v. Whirls*, decided April



14, 1947, held that during a veteran's statutory year of reemployment his restored rights cannot "be altered adversely by the usual processes of collective bargaining," thereby confirming petitioners' claim that their discharges were unlawful, notwithstanding the agreement entered into in July, 1946, between the respondent and the proposed additional respondents named in the motion.

2. The proposed additional respondents have, under the Court's construction of the said July agreement, an interest, either direct or indirect, in the reinstatement of petitioners to their former jobs.

Points and authorities are attached.

JAMES M. CARTER,

United States Attorney,

RONALD WALKER,

Assistant U. S. Attorney,

Chief of Civil Division,

JAMES C. R. McCALL, JR.,

Assistant U. S. Attorney,

By /s/ JAMES C. R. McCALL, JR.,

Assistant U. S. Attorney,

Attorneys for Petitioners.

At a stated term, to wit: The February Term. A. D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 19th day of May, in the year of our Lord one thousand nine hundred and forty-seven.

Present:

The Honorable: Paul J. McCormick, District Judge.

No. 6322-M Civ.

FRED ELIA IOB, et al.,

Plaintiffs,

vs.

LOS ANGELES BREWING CO.,

Defendant.

This cause coming on for hearing motion of petitioners for new trial; James C. R. McCall, Jr., Asst. U. S. Attorney, appearing for the petitioners; James M. McRoberts, Esq., appearing for the respondent; Attorney McCall moves for new trial; Attorney McRoberts opposes motion; it is ordered that the motion for new trial with leave to amend is granted for the purpose of enabling the U. S. Attorney to bring into the case the appropriate labor organization. [46]

In the District Court of the United States in and  
for the Southern District of California, Central  
Division

No. 6322-M Civil

FRED ELIA IOB, SAMUEL M. DOBBS, and  
WALDEMAR F. ULLRICH,

Petitioners,

vs.

LOS ANGELES BREWING CO., INC., a corporation; JOINT LOCAL EXECUTIVE BOARD OF CALIFORNIA, an unincorporated association of representatives of local labor unions chartered by the International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America; and BOTTLERS LOCAL UNION NO. 896 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS and WAREHOUSEMEN and HELPERS OF AMERICA, an unincorporated local labor union, and WALTER ECKBERG, president, and ANTHONY ZEIGLER, secretary, of said Local No. 896; and BREWERS, MALTSTERS & YEAST WORKERS LOCAL UNION NO. 893 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS AND WAREHOUSEMEN and HELPERS OF AMERICA, an unincorporated

ated local labor union, and THOMAS VACCA, president, and J. S. ALLWINE, secretary of said Local No. 893,

Respondents.

## AMENDED PETITION FOR ENFORCEMENT OF VETERANS' REEMPLOYMENT RIGHTS

Come the petitioners above named, and pursuant to leave of the Court heretofore granted, file this Amended Petition, against the eight respondents named in the caption, and respectfully allege:

### I.-VIII.

Petitioners adopt and incorporate herein by this reference, all of the allegations contained in Paragraphs I to VIII, inclusive, of their original Petition filed herein on January 23, 1947. The word "respondent," as used in [47] said paragraphs, designates the respondent Los Angeles Brewing Company, Inc., which is hereinbelow referred to in this Amended Petition as "the Company."

### IX.

The International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America is an unincorporated international labor union, which from time to time, issues charters to, and recalls them from, various local labor unions functioning under its jurisdiction. Said international union is more familiarly known, and is referred to hereinbelow by the name "Teamsters International." Respondent Bottlers Local Union No. 896 of said Teamsters International, and respondent

Brewers, Maltsters & Yeast Workers Local Union No. 893 of said Teamsters International, are unincorporated local labor unions charters by the said Teamsters International on or about July 28, 1946. The individual respondents are officers of said local labor unions, in the capacities stated in the caption. The said local unions will be referred to as "Teamsters Local 896" and "Teamsters Local 893," respectively. Respondent Joint Local Executive Board of California is composed of representatives of various local labor unions of Teamsters International. It acts as a collective bargaining agent for such locals, whose members are employed in California breweries, including Teamsters Locals 896 and 893. Said Joint Board will be referred to hereinafter as the "Teamsters Council."

#### X.

The International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America is also an unincorporated international labor union, which, from time to time, issues charters to, and recalls them from, various local unions functioning under its jurisdiction. Said international union is more familiarly known, and is referred to hereinbelow, as the "Brewery Workers International." Bottlers Local Union No. 293 and the Brewers, Maltsters & Yeast Workers Local Union No. 7 are two local unions chartered by the Brewery Workers International; and they will be referred to hereinafter by the names "IBW Local 293" and "IBW Local 7," respectively. [48]

## XI.

Continuously, for about 20 years or more prior to July 27, 1946, the respondent Company required of all bottlers in its employ that they be members in good standing of IBW Local 293, and of all brewers in its employ that they be members in good standing of IBW Local 7. Prior to World War II, this requirement was made by virtue of a collective bargaining agreement existing between the Company and various local unions of the Brewery Workers International, including IBW Locals 293 and 7. After the beginning of World War II, this requirement was continued in effect by the Company, until July 27, 1946, under a policy approved by a directive order of the War Labor Board, although a current contract formally signed by the Company and such local unions was not then in effect. Petitioners are now, and, from the beginning of their original employment by the Company, have been members in good standing of the appropriate IBW local unions, i.e., petitioner Iob, of IBW Local 7, and petitioners Dobbs and Ullrich, of IBW Local 293.

## XII.

Petitioners are informed that the additional respondents added by this amended petition, to wit, all the respondents other than the Company, claim to have an interest in whether or not petitioners shall be restored to their former positions by the Company; and that said added respondents caused the Company to discharge the petitioners, on the



dates aforesaid, and in the manner hereinafter stated, on account of the fact that on July 28, 1946, the Company entered into a contract, purporting to be a "closed shop" contract, with the respondent Teamsters Council, under which the Company agreed that only members in good standing of respondent Teamsters Local 896 "shall be employed" as bottlers in its brewery, and that only members in good standing of Teamsters Local 893 "shall be employed" as brewers in its brewery. Thereafter, the Company ceased to insist upon membership in IBW Locals 296 and 7 by its employed bottlers and brewers, and thereafter, insisted that they be members of Teamsters Local 896 and 893, respectively. A copy of said contract of July 28, 1946, is attached as Exhibit "A" to the answer of the respondent Company filed herein on February 18, 1947. [49]

### XIII.

Petitioners are informed, believe and state that in order for them to become members of Teamsters Locals 896 or 893, they would be obliged to make application for, and be admitted to, membership by said locals, and to pay admission fees and dues thereto, in addition to the fees and dues already paid and being paid, by them to the IBW locals, of which they were already members; and that their reemployment rights were adversely affected by said Company's new requirement that they become members of said Teamsters Local unions as a condition of continued employment in their former positions. In August and September, 1946, upon complaint

of the respondents Teamsters Locals 896 and 893, made pursuant to said purported "closed shop" contract of July 28, 1946, the Company began firing bottlers and brewers from its employ who were then members in good standing of IBW Locals 293 and 7 but had not made application for, or been successfully admitted to, membership in said Teamsters Local 896 or 893, respectively.

#### XIV.

All eight of said respondents have construed and applied said July 28, 1946, contract as a "closed shop" agreement, effective at once against all bottlers and brewers in the Company's employ, who might not be members of said Teamsters Locals 896 or 893, including returned veterans of the armed forces during the reemployment year provided for in Section 8 of the Selective Training and Service Act of 1940. Petitioners are advised, believe and state that said agreement of July 28, 1946, is not, and never has been, legally effective as a "closed shop" contract against either reemployed veterans, with reemployment rights, or against workmen employed by the Company as bottlers or brewers on and before July 28, 1946. Petitioners are further informed, believe and state that at the time the said contract was entered into, the National Labor Relations Board had not certified the Teamsters Council as the collective bargaining agent for any portion of the Company's employees; and that said Board had not, and did not, prior to December, 1946, determine what unit of the Company's em-

ployees might be a proper unit for collective bargaining with the Company, through such Teamsters Council; and that said Board has not yet certified said Teamsters Council as the collective [50] bargaining agent for the Company's employees. They accordingly represent that said Teamsters Council had no right to enter into a "closed shop" contract as the purported "representative" of the Company's employees in July 28, 1946, as the Company well knew.

#### XV.

Petitioners are informed, believe and state that petitioner Iob, although not a member of the Teamsters Local 893, was reemployed by the Company as a brewer as aforesaid on September 9, 1946, with the express consent of said Teamsters Local 893, given through respondent Elmer Schaffer, the secretary thereof; that he was then discharged by the Company on September 17, 1946, on demand of the said Schaffer, acting for said Teamsters Local 893, on the sole ground that said petitioner was not then a member of said local. Petitioner Iob was again reemployed by the Company as a brewer as aforesaid on November 6, 1946, with the express consent of said Teamsters Local 893, given through the said Schaffer, although he was not then a member of said local, as Schaffer and said local well knew; and he was again thereafter discharged by the Company on November 25, 1946, on demand of the same said Schaffer, acting for said local, once again upon the sole ground that he was not then a member of

said local. Petitioner Iob never agreed to apply for or to become a member of said local; and the wavering actions of the said local, above described, were caused by the fact, as he is informed, believes and states, that the said local itself recognized, and agreed, prior to November 25, 1946, that petitioner Iob, as a returned veteran of the armed forces was entitled by law to be reemployed and retained in his position as a brewer by the Company for one year, notwithstanding his failure to become a member of said Teamsters Local 893.

#### XVI.

Petitioners Dobbs and Ullrich, after being reemployed in their former positions, as aforesaid, were prevented from working between September 21, 1946, and October 5, 1946, by the fact that on September 21, 1946, a strike was called against the Company by IBW Locals 296 and 7 and other IBW locals, in protest against the firing by the Company of bottlers and brewers who had not joined [51] Locals 896 and 893 since July 28, 1946, and by the establishment and maintenance of a picket line by said IBW local unions at the entrance to the Company's brewery. In order to go to work, petitioners would have had to cross said picket line maintained by their own IBW local union. Said picket line was maintained until March 26, 1947, but has been discontinued since that date. On or about September 23, 1946, the Company, through its superintendent in charge of employment, informed petitioner Ullrich and others, who had not crossed said picket

line, that their employment by the Company had not been terminated, and that the Company would not issue termination slips to such workmen, nor even to the strikers. Said termination slips were necessary to entitle such strikers and workmen to secure state unemployment compensation, or to secure the advice of the state employment service in seeking employment elsewhere. The Company's superintendent at that time informed them that they were still considered "employees" of the Company.

## XVII.

Thereafter, on or about September 31, 1946, petitioners Dobbs and Ullrich, with certain other veterans of the armed forces, also formerly employed as bottlers, informed said superintendent that they were ready and willing to go back to work, and would report therefor at the brewery the next morning, if he would permit them to do so. The superintendent then informed them that before they could come back to work, they would have to have a clearance therefor from Anthony Zeigler, secretary and business agent of Teamsters Local 896. They then went to the office of said Teamsters Local 896, and were informed by respondent Zeigler that they were "through" as employees of the Company; that he would take their applications for membership in said Teamsters Local, if they wished to submit them; but that they would not be permitted to return to work at the Company's brewery, even if admitted to membership; that they would have to be content with calls to temporary work at other



breweries as needed, and without seniority in their jobs with the Company. On October 5, 1946, petitioners Dobbs and Ullrich again reported to the Company's superintendent in charge of employment and informed him that Zeigler had refused to clear them for work at [52] the Company's brewery, but that they were then ready to go to work in their former positions, if he would permit it. The said superintendent then communicated with the respondent Zeigler by telephone, as petitioners are informed, believe and state, and then informed them that there was "nothing that he could do about it," and that they could not go back to work in their former positions so long as Teamsters Local 896, through Zeigler, refused to consent for them to be so employed. Petitioners Dobbs and Ullrich are informed that this constituted a discharge "without cause" from their restored positions; and since that dated they have not been employed by the Company.

### XVIII.

Petitioners represent that their reemployment rights have been adversely affected by all of the respondents, through the execution, and application to them of the aforementioned "closed shop" contract of July 28, 1946; and that each petitioner was, by the joint action of the various respondents, unlawfully discharged, without cause, from his restored position within one year after such restoration, as aforesaid. Petitioners are accordingly advised that each of them is entitled to be restored by



the Company to his said position for the portion of his reemployment year that remained unexpired when he was discharged, together with his original seniority rights in the Company's service, and to be compensated for his interim loss of wages suffered by reason of such discharge.

Wherefore, Petitioners Pray:

(a) That the reemployment rights of the petitioners be adjudicated and declared, as against all eight of the respondents.

(b) That the respondent Los Angeles Brewing Company, Inc., be ordered, directed and specifically required: (1) To reemploy and restore each petitioner to his former position in its employ, without any loss of seniority; and (2) To retain each petitioner in such position, without discharge therefrom, unless for legal cause, for a period equal to that portion of his reemployment year that remained unexpired when he was so discharged.

(c) That each of the respondents, their officers and agents, other than the respondent Los Angeles Brewing Company, Inc., be enjoined not to [53] interfere with such employment of the petitioners by said Company for said period.

(d) That all of the respondents, or such of them as may be liable therefor, be required to compensate each petitioner for his interim loss of wages pending such restoration.

(e) That a preliminary injunction issue requiring the Company to restore the petitioners to its employ as aforesaid, pending the trial of this case,

and enjoining the other respondents not to interfere with such employment, during such period; and that at the hearing such injunction be made permanent for the balance of the reemployment year of each petitioner, as aforesaid.

(f) That the respondents, and each of them, be required to show cause, if any exists, why such preliminary and permanent injunctions should not issue.

(g) That petitioners recover of the respondents the fees and costs of the United States herein for its benefit.

(h) That petitioners have all such other, further and different relief as they may be entitled to in the premises, and that they have general relief.

JAMES M. CARTER,  
United States Attorney,

RONALD WALKER,  
Assistant U. S. Attorney,  
Chief of Civil Division,

By /s/ JAMES C. R. McCALL, JR.,  
Assistant U. S. Attorney,  
Attorneys for Petitioners.

State of California,  
County of Los Angeles—ss.

Fred Elia Iob, makes oath that the statements made in the foregoing Amended Petition as of his own knowledge are true, that those made on information and belief, he believes to be true, and that

the entire Amended Petition is true to the best of his knowledge, information and belief.

/s/ FRED ELIA IOB,  
Petitioner.

Subscribed and sworn to before me this 27th day of May, 1947.

EDMUND L. SMITH  
Clerk, United States District Court, Southern District of California.

[Seal] /s/ CHARLES A. SEITZ,  
Deputy. [55]

State of California,  
County of Los Angeles—ss.

Samuel M. Dobbs, makes oath that the statements made in the foregoing Amended Petition as of his own knowledge are true, that those made on information and belief, he believes to be true, and that the entire Amended Petition is true to the best of his knowledge, information and belief.

/s/ SAMUEL M. DOBBS,  
Petitioner.

Subscribed and sworn to before me this 27th day of May, 1947.

EDMUND L. SMITH,  
Clerk, United States District Court, Southern District of California.

[Seal] /s/ CHARLES A. SEITZ,  
Deputy. [56]

State of California,  
County of Los Angeles—ss.

Waldemar F. Ullrich, makes oath that the statements made in the foregoing Amended Petition as of his own knowledge are true, that those made on information and belief, he believes to be true, and that the entire Amended Petition is true to the best of his knowledge, information and belief.

/s/ WALDEMAR F. ULLRICH,  
Petitioner.

Subscribed and sworn to before me this 28th day of May, 1947.

EDMUND L. SMITH,  
Clerk, United States District Court, Southern District of California.

[Seal]      /s/ CHARLES A. SEITZ,  
Deputy.

[Endorsed]: Filed May 28, 1947. [57]

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[Title of District Court and Cause.]

### ORDER TO SHOW CAUSE

Upon the Petition and the Amended Petition herein, verified by the affidavits of the petitioners,  
It Is Ordered that the following respondents, to wit:

Los Angeles Brewing Company, Inc.; and, Joint

Local Executive Board of California; and Bottlers Local Union No. 896 of the International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America, and Walter [58] Eckberg, president, and Anthony Zeigler, secretary, thereof; and Brewers, Maltsters & Yeast Workers Local Union No. 893 of the International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America, and Thomas Vacca, president, and Elmer Schaffer, secretary, thereof:

Show cause before this Court at a stated term thereof to be held in the Federal Building in the City of Los Angeles, State of California, on the 5th day of June, 1947, at 10:00 o'clock in the forenoon of said day, why an order should not be made and entered in the above entitled action which shall direct and require the respondent Los Angeles Brewing Company, Inc. to restore the petitioners to their former positions in its employ, without loss of seniority, i.e., petitioner Fred Elia Iob to the position of brewer and the petitioners Samuel M. Dobbs and Waldemar F. Ullrich to the positions of bottlers, in accordance with the prayers of the Amended Petition, and which order shall enjoin the other named respondents, their officers and agents, from interfering with such employment.

It Is Further Ordered that the service of a copy of this Order to Show Cause, together with a copy of the Petition and of the Amended Petition, on the said respondents, on or before the 29th day of May, 1947, shall be sufficient notice hereof.

Dated at Los Angeles, California, the 28th day of May, 1947.

PAUL J. McCORMICK,  
U. S. District Judge.

[Endorsed]: Filed May 28, 1947.

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At a stated term, to wit; The February Term. A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday, the 5th day of June, in the year of our Lord one thousand nine hundred and forty-seven.

Present: The Honorable Paul J. McCormick,  
District Judge.

No. 6322-M Civ.

FRED ELIA IOB, et al.,

Petitioners,

vs.

LOS ANGELES BREWING CO., INC., et al.,  
Respondents.

This cause coming on for hearing order to show cause why petitioners should not be restored to former positions, without loss of seniority; James C. R. McCall, Jr., Asst. U. S. Attorney, appearing as counsel for Petitioners; James M. McRoberts, Esq.,



appearing as counsel for respondent Los Angeles Brewing Co.; P. H. McCarthy, Jr., Esq., appearing specially for respondents Brewers, Maltsters & Yeast Workers Local Union 893 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Thomas Vacca and J. S. Allwine, presents in behalf of said respondents, a motion to dismiss, vacate and set aside alias summons, amended petition, order to show cause and affidavits and memorandum in support of motion. Attorney McCarthy states that failure to make service of the documents as provided in the order to show cause constitutes violation of the rules; and that failure to serve memorandum of law constitutes a waiver of the motion of petitioners. The documents are received by the Court, read, and argument thereon is ordered.

Attorney McCall argues to the Court for the petitioners in support of the order to show cause. Attorney McCarthy makes statement. Attorney McCall continues his argument.

Attorney McCarthy argues for the respondents. Attorney McCall makes statement and requests that testimony of Mr. McCarthy be taken and it is so ordered. P. H. McCarthy, Jr., is called, sworn, and testifies on direct examination by Attorney McCall. Respondents' exhibits A and B are marked for identification and later ordered [63] filed. Wm. S. Sweeney is called, sworn, and testifies for petitioners. Witness McCarthy resumes his testimony.

Respondents' exhibits C, D, E and F are marked for identification and are ordered filed. Witness Sweeney, previously sworn, is re-called and resumes his testimony. Exhibits heretofore marked as D, E, and F are filed as Ct's, 1, 2 and 3 in evidence. The Court overrules motion of respondents to vacate and set aside service of alias summons as to said respondents Brewers, Maltsters and Yeast Workers Local Union #893 of International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America; Thomas Vacca and J. S. Allwine. Attorney McRoberts presents motion on behalf of respondent Los Angeles Brewing Co. to dismiss petition as to said respondent and same is ordered filed. The motions to dismiss of respondents Los Angeles Brewing Co. and Local Union #893, etc., et al., are filed, together with documents in support thereof.

Attorney McCall moves to amend petition to substitute name of J. S. Allwine as a party respondent in place of Elmer Schaffer and it is so ordered. It is further ordered that further hearing on order to show cause be had on Saturday, June 7, 1947; 9:30 a.m. [64]

[Title of District Court and Cause.]

MOTION TO DISMISS, VACATE AND SET  
ASIDE ALIAS SUMMONS, AMENDED PE-  
TITION FOR ENFORCEMENT OF VET-  
ERANS EMPLOYMENT RIGHTS, ORDER  
TO SHOW CAUSE, AND AFFIDAVITS,  
AND MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF MO-  
TION

The respondents, Brewers, Maltsters and Yeast Workers Local Union No. 893 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, an unincorporated local labor union and Thomas Vacca, and in addition thereto, J. S. Allwine, not a respondent named herein either specifically or as a respondent whose name is unknown and each of them appearing specially by their counsel and the counsel of each of them, move the court as follows: [65]

1. To dismiss, vacate and set aside the Alias Summons and Amended Petition for Enforcement of Veterans Rights filed in the above entitled matter and that certain Order to Show Cause issued by the above entitled court on the 28th day of May, 1947, upon the ground that the above entitled court was without jurisdiction to order or permit the filing of said Amended Petition and issuance of said Alias Summons and was without jurisdiction to make said Order to Show Cause and is without jurisdiction to proceed upon said Petition and is

without jurisdiction to proceed upon said Order to Show Cause other than to dismiss, vacate, and set aside said Alias Summons, said Petition and said Order to Show Cause.

2. That the joinder of the moving parties herein appearing specially is and was at this stage of the proceedings and upon the terms laid down by the court as to each said moving party a denial of due process and a violation of the Vth Amendment of the Constitution of the United States.

3. That the Amended Petition fails to state a claim upon which relief may be granted.

4. As to J. S. Allwine, to dismiss, vacate and set aside Alias Summons, Amended Petition and Order to Show Cause upon the grounds that he is not named therein specifically or as an unknown respondent.

5. As to J. S. Allwine, to dismiss, vacate and set aside said Alias Summons, Amended Petition and Order to Show Cause upon the grounds that he is not now and never was an officer of said Local 893.

6. As to J. S. Allwine, to dismiss, vacate and set aside the service of said Alias Summons, Amended Petition and Order to Show Cause upon the grounds that they and each of them was not served upon him within the time provided for by the rules of court or by said Order to Show Cause or either of them and the grounds [66] set out in paragraphs 4 and 5 above.

7. As to Thomas Vacca, to dismiss, vacate and set aside said Alias Summons, Amended Petition and Order to Show Cause upon the grounds that he is not now and never was president of said Local 893 and is not now and never was an officer of said Local 893.

8. As to Thomas Vacca, to dismiss, vacate and set aside the service of said Alias Summons, Amended Petition and Order to Show Cause upon the grounds that they and each of them was not served upon him within the time provided for by the rules of court or by said Order to Show Cause or either of them and the grounds set out in paragraph 7 above.

9. As to said Local 893, to dismiss, vacate and set aside the service of said Alias Summons, Amended Petition and Order to Show Cause upon the grounds that they and each of them was not served upon it in the manner prescribed by the rules of court or at all.

10. As to said Local 893, to dismiss, vacate and set aside the service of the said Alias Summons, Amended Petition and Order to Show Cause upon the grounds that they and each of them was not served upon said Local 893 within the time prescribed by the rules of court or by the said Order to Show Cause.

Dated June 4, 1947, San Francisco, Calif.

/s/ P. H. McCARTHY, JR.,  
Attorney for Brewers, Maltsters and Yeast Workers  
Local Union No. 893 of the International  
Brotherhood of Teamsters, Chauffeurs and  
Warehousemen and Helpers of America,  
Thomas Vacca, respondent, appearing specially  
and J. S. Allwine, appearing specially. [67]

### AFFIDAVIT

State of California,  
City and County of San Francisco—ss.

P. H. McCarthy, Jr., being duly sworn, deposes  
and says:

That at all times mentioned in the Amended Petition for enforcement of Veterans' Re-employment rights, including the period since the filing thereof, Thomas Vacca has not been and is not now President and Elmer Schaffer has not been and is not now Secretary and J. S. Allwine has not been and is not now Secretary of Brewers, Maltsters and Yeast Workers Local Union No. 893 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America named in said Amended Petition as Brewers, Maltsters & Yeast Workers Local Union No. 893 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with main office in San Francisco, California.

That since July, 1946, the Union of which the



Petitioner, and each of them, is a member, to-wit; the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, chartered by the Congress of Industrial Organizations (C.I.O.) has claimed the right to represent the employees of the California Breweries, including the Los Angeles Brewing Co., respondent employer.

That on August 2, 1946, said Union, acting for and on behalf of its members including the petitioners herein, instituted an action in the Superior Court of the State of California, in and for the County of Los Angeles, numbered No. 517-511 therein, to compel the respondent employer and all other Brewing Companies in the Los Angeles area to discharge all of said respondent employers' employees employed in the Brewing, Bottling and Delivery Departments, including veterans who were members of [68] Unions affiliated with the American Federation of Labor and to hire and employ only members in good standing in the C.I.O. unions to which Petitioners belong.

That on August 15, 1946, the said action was quashed and dismissed, the Court's Order stating in part—

“There is indubitably a controversy between brewery worker locals on the one side and the teamster locals and the brewery companies on the other side as to who or what union is the bargaining agent of the brewery employees . . .”

That after the action was dismissed, the said C.I.O. Union called a strike and caused picket lines

to be placed around respondent brewing company in an effort to compel said respondent Brewing Company to discharge all its said employees not members of said C.I.O. Union, including veterans, and to hire only members of the said C.I.O. Union.

The strike and picket lines failed in their purpose.

/s/ P. H. McCARTHY, JR.

Subscribed and sworn to before me this 4th day of June, 1947.

[Seal]

CATHERINE E. KEITH,

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires December 16, 1950. [69]

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

The Court is without jurisdiction.

“District Courts have only such jurisdiction as Congress confers; and Congress may change or take away any jurisdiction it has conferred, making such change operative even in pending cases . . .”

36 C.J.S., Sec. 308, page 512.

29 U.S.C.A. 104-105-113

50 App. U.S.C.A. 308 (c)

### II.

The joinder of the parties appearing specially at

this stage of the proceedings and upon the terms laid down by the Court is a denial of due process and a violation of the Vth Amendment to the Constitution of the United States.

“The right to a fair and adequate hearing in which one has the right to defend his interest before an impartial court is essential to due process of law.”

16 C.J.S. Sec. 622, page 1265.

“A party has a right to cross-examine witnesses who have testified for the adverse party, and this right is absolute and not a mere privilege.”

70 C.J., Sec. 779, page 611.

### III.

The Order to Show Cause and Amended Petition, and each of them, was not served in accordance with the rules of Court.

Rule 3—Local Rules of Civil Procedure.

Rule 5—Rules of Civil Procedure.

Rule 6—Rules of Civil Procedure.

### IV.

The Order to Show Cause and Amended Petition, and each of them was not served within the time provided by the Order of [70] the Court.

Order to Show Cause dated May 28, 1947.

Rule 6—Rules of Civil Procedure.

### V.

The Alias Summons was not served in accordance with the rules of the Court.

Rule 5—Rules of Civil Procedure.

Rule 6—Rules of Civil Procedure.

Dated June 4, 1947.

Respectfully submitted:

/s/ P. H. McCARTHY, JR.

[Endorsed]: Filed June 5, 1947. [71]

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[Title of District Court and Cause.]

MOTION TO DISMISS

To: Fred Elia Iob; Samuel M. Dobbs; Waldemar F. Ullrich; James M. Carter, U. S. Attorney; Ronald Walker, Assistant U. S. Attorney, Chief of Civil Division; and James C. R. McCall, Jr., Assistant U. S. Attorney.

You and each of you, will please take notice that on the 5th day of June, 1947, at 10 o'clock, a.m., or as soon thereafter as counsel may be heard, respondent Los Angeles Brewing Company, will move the above-entitled Court as follows, to wit:

1. Dismiss petitioners' amended petition because the same fails to state a claim against this respondent for which relief can be granted.

2. To dismiss the action on the ground that this Court lacks jurisdiction; that it affirmably appears from the said petition [72] and the allegations therein contained, that a labor dispute exists between the various labor unions therein described with respect to jurisdiction over respondent Los Angeles Brewing Company employees, employed in its

brewery, bottling, checking and delivery departments; that it affirmably appears that the said respondent corporation has been involved in said labor dispute and has been picketed by certain of said unions, as more specifically set forth in said amended complaint; that it affirmably appears from petitioners' said amended complaint that this respondent has a "closed shop" agreement with the other respondent labor unions, described in petitioners' amended petition, and that the legality and existence of said agreements are being questioned by petitioners in their amended petition; that by reason of the foregoing the National Labor Relations Board has sole and exclusive jurisdiction in the premises and this Court is without jurisdiction to proceed herein or to order the injunction sought by petitioners in their order to show cause, now set for hearing in this Honorable Court on June 5, 1947, other than to dismiss the said order to show cause and said amended petition.

Said motion will be made upon the files and records of this proceeding, together with Memorandum of Points and Authorities and Affidavit of James M. McRoberts, copies of which are served upon you herewith.

Dated this 5th day of June, 1947.

HANNA AND MORTON,

By /s/ JAMES M. McROBERTS,  
Attorneys for Respondent Los Angeles Brewing  
Company.

[Endorsed]: Filed June 5, 1947. [73]

[Title of District Court and Cause.]

AFFIDAVIT OF JAMES M. McROBERTS

State of California,  
County of Los Angeles—ss.

James M. McRoberts, being first duly sworn, deposes and says:

That he is an attorney at law duly licensed to practice before this Honorable Court, and that he is of counsel for respondent Los Angeles Brewing Company, a corporation.

That heretofore, to wit: On or about August 1, 1946, the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, CIO, together with various persons named as joint parties plaintiff acting as representatives of Local Unions 7 and 293 of said International Union, which said International Union and said named Locals are the same International Union of [74] United Brewery, Flour, Cereal and Soft Drink Workers of America and Locals 7 and 293 referred to in Paragraphs XI and XII, and other paragraphs of petitioners' amended petition herein, did institute proceedings in the Superior Court of the State of California, in and for the County of Los Angeles, No. 517,511; that as an ancillary to said proceedings the said unions last mentioned, plaintiffs therein, did procure a Temporary Restraining Order and Order to Show Cause against respondent corporation and other various brewing companies located in Southern California, a copy



of which said Temporary Restraining Order and Order to Show Cause is attached hereto and marked Exhibit "A."

That the said Los Angeles Brewing Company, together with other there named defendants, did make certain motions to dismiss, quash, vacate, and set aside the Summons, Complaint, and Temporary Restraining Order and Order to Show Cause, above referred to, upon various grounds, including the ground that the said Superior Court lacked jurisdiction for the reason that original jurisdiction of the subject matter of the said unions' complaint lay in the National Labor Relations Board under the National Labor Relations Act; that thereafter the Honorable Henry M. Willis, Judge of the Superior Court, did on August 15, 1946, enter a certain "Order on Motions to Quash and Dismiss," a true and correct copy of which is attached hereto and marked Exhibit "B"; that thereafter the said unions, above described, did file a notice of appeal from said Superior Court last mentioned; that pending said appeal the said Superior Court did make its "Order Maintaining Status Quo Pending Appeal," a copy of which said order is attached hereto and marked Exhibit "C"; that thereafter respondent Los Angeles Brewing Company, in conjunction with said other brewing companies, did move to vacate the same; that after a hearing an Order was made [75] by the said Honorable Judge Henry M. Willis, a copy of which said Order is attached hereto and marked Exhibit "D."

That the appeal described above was subsequently

abandoned by said International Union, notice of abandonment being filed November 15, 1946.

Dated this 5th day of June, 1947.

/s/ JAMES M. McROBERTS.

Sworn to and subscribed before me this 5th day of June, 1947.

[Seal] /s/ LAURA TEETER,  
Notary Public in and for said County and State.

HANNA & MORTON,

By /s/ JAMES M. McROBERTS,  
Attorneys for Respondent Los Angeles Brewing  
Company. [76]

EXHIBIT "A"

In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 517511

INTERNATIONAL UNION OF UNITED  
BREWERY, FLOUR, CEREAL AND SOFT  
DRINK WORKERS OF AMERICA, a vol-  
untary unincorporated association; EUGENE  
J. McCANN, individually and as International  
Representative and Supervisor for California  
of said International Union; GEORGE KENT;  
FRITZ GREUB; JACK RUFER; AL LEI-  
BACHER, individually and as members of and  
representatives of Local Union No. 7 of the

International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, a voluntary unincorporated association; ARNOLD BIRD; ED MAIN, JR.; LYNN MATTESON; LEO KOZLOSKY, individually and as members and representatives of Local Union No. 227 of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, a voluntary unincorporated association; THEODORE TAYLOR; CHARLES HAGER; HOWARD VOSS; JOHN BESSENBACHER, individually and as members and representatives of Local Union 293 of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, a voluntary unincorporated association,

Plaintiffs,

vs.

ACME BREWING CO., a corporation; A.B.C. DIST. CO., a corporation; ASSOCIATED BREWERS DIST. CO., a corporation; BOHEMIAN DIST. CO., a corporation; BLAIR BEVERAGE CO., a corporation; CANADA DRY GINGER ALE, INC., a corporation; COCA-COLA CO., a corporation; DR. PEPPER BOTTLING CO., a corporation; EAST-SIDE DIST. CO., a corporation; GLOBE BOTTLING CO., a corporation; GENERAL DIST. CO., a corporation; GEO. W. PEVERLEY CO., a corporation; GRACE BROS. BREWING CO., a corporation; HOME ICE [77] &

COLD STORAGE CO., a corporation; KELLY BEVERAGE CO., a corporation; LOS ANGELES BREWING CO., a corporation; MAIER BREWING CO., a corporation; MILLER MALTING CO., a corporation; MISSION DRY CORP., a corporation; NEHI BEVERAGE CO., a corporation; PABST SALES CO., a corporation; PARK BEVERAGE #1, a corporation; PARK BEVERAGE #2, a corporation; PROGRESSIVE WHOLESALE LIQUOR CO., a corporation; PEPSI-COLA BOTTLING CO., a corporation; RAINIER BREWING CO., a corporation; STEWART McKEE & CO., a corporation; SOUTHERN CALIFORNIA BREWERS, a corporation; SHASTA WATER CO., a corporation; ZESTO BOTTLING CO., INC., a corporation; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL, a voluntary unincorporated association; EINER MOHN, individually and as International Representative for Southern California of said INTERNATIONAL BROTHERHOOD; LOCAL 893, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, a voluntary unincorporated association; HENRY JENICHEN, individually and as secretary-treasurer and chief executive officer of said Local 893; ELMER SCHAFFER, individu-

ally and as secretary-treasurer of the Los Angeles Branch of said Local 893; LOCAL 884 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, a voluntary unincorporated association; C. D. BISZANT, individually and as secretary-treasurer and chief executive officer of said Local 884; WILLIAM PAYNE, individually and as secretary of the Los Angeles Branch of said Local 884; LOCAL No. 888 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL, a voluntary unincorporated association; MARTIN CHRISTEN, individually and as Secretary and Treasurer and chief executive officer of said Local 888; LOCAL 203 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL, a voluntary unincorporated association; KENNETH NASH, individually and as secretary and chief executive officer of said Local 203; LOCAL 896 of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, a voluntary unincorporated association; WILLIAM H. AHERN, individually and as secretary-treasurer and chief executive officer of said Local 896; ANTONE ZEIGLER, individually and as chief



executive officer of the Los Angeles Branches of said Local 896, DOE I, DOE II, DOE III, DOE IV, DOE V, DOE VI, DOE VII, DOE VIII, DOE IX and DOE X, voluntary unincorporated associations; DOE XI, DOE XII, DOE XIII, DOE XIV, DOE XV, DOE XVI, DOE XVII, DOE XVIII, DOE XIX, DOE XX, DOE XXI, DOE XXII, DOE XXIII, DOE XXIV and DOE XXV,

Defendants. [78]

## ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Upon the reading and the filing of the verified complaint of plaintiffs in this action, and good cause appearing therefor, and it appearing that this is a proper case for an order to show cause

It Is Therefore Ordered that each of the defendants above named appear in the court room of Department 34 on the 20th floor of the City Hall, Los Angeles, California, at the hour of 9:30 a.m., on the 12th day of August, 1946,

It Is Further Ordered that the defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, defendant Local 893 of said International Brotherhood, defendant Local 896 of said International Brotherhood, defendant Local 888 of said International Brotherhood, defendant Local 203 of said International Brotherhood, defendant Local 884 of said International Brotherhood, defendants Einer Mohn, Henry Jenichen, William H. Ahern, Martin



Christen, C. D. Biszant, William Payne, Kenneth Nash and Antone Zeizler, show cause, if any they have, at the time and place aforestated why they, their agents, attorneys, servants and representatives should not be restrained and enjoined during the pendency of the action herein from directly or indirectly or by any means or device whatsoever:

a. acting or attempting to act as the exclusive representative for purposes of collective bargaining of any employees of the defendant employers listed in Paragraph XI of the verified complaint in the bottlers, brewers, checkers or drivers classifications.

b. enforcing or attempting to enforce the provisions of the Teamsters Contract, or any contract, arrangement or [79] understanding, whereby the employees of the defendant employers listed in Paragraph XI of the verified complaint in the bottlers, brewers, checkers or drivers classifications are required to become and remain members of the International Teamsters and Teamsters Locals 893, 896, 888, 884 or 203, as the case may be, as a condition of employment;

c. interfering by the use of picket lines, boycott, threats of force and violence, force or violence or by any means whatsoever with the enforcement and performance of the Brewery contract or any term or condition thereof;

d. inducing or attempting to induce by picket lines, boycott, threat of force and violence, force and violence or by any means whatsoever a breach of or failure to enforce or perform the Brewery contract or any term or condition thereof.

It Is Further Ordered that the corporate defendants named in the caption hereinabove, show cause, if any they have, at the time and place aforesated why they, their agents, attorneys, servants and representatives should not be restrained and enjoined during the pendency of the action herein from directly or indirectly or by any means whatsoever:

e. discharging or threatening to discharge any employee in the bottlers, brewers, checkers or drivers classifications or any employee covered by the Brewery contract, for failure to become or remain a member of International Teamsters and Teamsters Locals 896, 893, 888, 884 or 203, as the case may be;

f. enforcing or performing the Teamsters contract or any term or condition thereof;

g. recognizing the International Teamsters or Teamsters Locals 896, 893, 888, 884 or 203 as the exclusive representative for purposes of collective bargaining of the employees of the defendant employers listed in Paragraph XI of the verified complaint, in the bottlers, brewers, checkers and drivers classifications [80] or bargaining collectively with said International Teamsters or Teamsters Locals 896, 893, 888, 884 or 203 as such representative;

h. refusing to carry out or perform the provisions of Section 1 of the Brewery Agreement requiring all employees of said defendant employers in the bottlers, brewers, checkers and drivers classifications to become and remain members of the International Union and Locals 7, 227, 229 or 293 as

the case may be as a condition of employment, or the provisions of Section 2 of the Brewery Agreement requiring said defendant employers to obtain and hire new employees through the respective locals to which the employees in the respective classifications are required to belong, or any other term or provision of the Brewery Agreement.

It Further Appearing to the Satisfaction of the Court on reading the verified complaint of plaintiffs herein that this is a proper case for granting a temporary restraining order and that unless the temporary restraining order prayed for in said complaint be granted, great injury will result to plaintiffs before the matter can be heard on the order to show cause:

It Is Therefore Ordered that pending the hearing of this order to show cause, defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, defendant Locals 893, 896, 888, 884 and 203 of said International Brotherhood, defendants Einer Mohn, Henry Jenichen, William H. Ahern, Martin Christen, C. D. Bissant, William Payne, Kenneth Nash and Antone Zeigler, and each of them, their agents, attorneys, servants and representatives are hereby enjoined and restrained from doing or attempting to do or causing to be done either directly or indirectly or by any means, method or device any of the actions hereinabove set forth in the paragraphs lettered a, b, c and d inclusive; and that the corporate defendants named in the caption hereof and each of them, their agents, attorneys, servants and repre-

sentatives are hereby enjoined and restrained from doing or [81] attempting to do or causing to be done either directly or indirectly by any means, method or device any of the actions hereinabove set forth in the paragraphs lettered e, f, g and h inclusive.

It Is Further Ordered that a true copy of this order to show cause and temporary restraining order, memorandum of points and authorities, summons and complaint be served upon the defendants at least five days before the return of the order to show cause herein.

Dated at Los Angeles, California, this 2nd day of August, 1946.

WILLIS,

Judge of the Superior Court.

EXHIBIT "B"

In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 517511

INTERNATIONAL UNION etc. et als,  
Plaintiffs,

vs.

ACME BREWING CO. et als,  
Defendants,

ORDER ON MOTIONS TO QUASH  
AND DISMISS

Plaintiff unions, comprising four locals, claiming that there exists a collective bargaining agreement between them and defendant brewery compa-

nies, seek herein to restrain such companies and a teamsters local union No. 893 and others from interfering with the performance of such agreement. An order to show cause why a preliminary injunction should not be issued was made, and a temporary restraining order was issued on August 2, 1946, returnable on August 12, 1946. On this latter date certain defendants, in three groups, made and submitted motions to dismiss, quash, vacate and set aside the summons and complaint, temporary restraining order and the order to show cause upon the ground, among others that this court lacks jurisdiction to entertain the cause for the reason that all original jurisdiction of the subject of dispute herein lies in the National Labor Relations Board under the National Labor Relations Act, the subject of controversy being [83] admittedly the identity of the collective bargaining agent for the employees of the brewery companies.

These three motions—all similar in character and purpose—were argued at length by able counsel, and the history of the parties and their past relationships and controversies was fully revealed by affidavits and the pleadings.

There is a sharp dispute on the question of the present existence—as well as past existence—of any collective bargaining agreement between the plaintiff brewery workers unions and the brewery companies. There is indubitably a controversy between the brewery workers locals on the one side and the teamster locals and the brewery companies on the other side as to who or what union is the bargaining



agent of the brewery employees. These controversies have not been presented to the National Labor Relations Board for decision.

It seems to be clearly settled that under the facts herein relating to the character and interstate extent of the brewery companies' business operations, the National Labor Relations Board has initial exclusive jurisdiction to determine who is or shall be bargaining agent for the employees of the brewery companies herein. This conclusion finds complete support in the decision of the Circuit Court of Appeals, Ninth Circuit, rendered in 1939 in the case embracing many of the parties herein, and reported in 106 Fed. 2nd 871. Therein the court stated:

“Since both the employees and the Brewery Workers Union and also the breweries have an administrative tribunal established by Congress for the specific purpose of determining the controversy concerning the bargaining agent, the decision of that tribunal, and not the federal court, first should have been sought. *Myers v. Bethlehem Shipbuilding Corporation*, 303 U.S. 41, 50; *Fur Workers Union, Local No. 72 v. Fur Workers Union*, No. 21238, 70 App. D.C. 122, 105 Fed. 2nd 1, 12.”

In the case of *Adkins v. Western Pipe & Steel Co.*, No. 476502, files of this court, and reported in C.C.H. 5 Labor Cases, [84] Par. 61097, decided by the author of this opinion on May 25, 1942, I had occasion to review this subject of jurisdiction as outlined in the National Labor Relations Act, and



after citing and quoting from several cases on the point, including the federal case last above quoted from, I wrote the following comment which appears quite pertinent herein:

“I have in mind a very clear conception at this time of the line of demarkation which determines on which side the jurisdiction falls. If the action is brought by an employer, innocent of any unfair labor practice, in a court of equity, against unions charged with committing unlawful acts, the court has jurisdiction and not the Board. If the case is by a labor union through its members or officers suing in a representative capacity against an employer for relief from or to prevent unfair labor practices, the Board under the National Labor Relations Act, and the Board alone, has jurisdiction and that no court can be called upon in such case to intervene or usurp jurisdiction and power, until and unless the Board has exhausted all its remedies and there is nothing left but recourse to the courts, or a review sought as provided by the Act in a circuit court of appeals.”

From the foregoing it follows that the three motions to quash and dismiss the summons and complaint, to vacate the temporary restraining order and to discharge the order to show cause should each be granted, and

It Is So Ordered. August 15, 1946.

HENRY M. WILLIS,  
Judge. [85]

EXHIBIT "C"

In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 517511

INTERNATIONAL UNION OF UNITED  
BREWERY, FLOUR, CEREAL AND SOFT  
DRINK WORKERS OF AMERICA, a voluntary unincorporated association, EUGENE J. McCANN, individually and as International Representative and Supervisor for California of said International Union; GEORGE KENT, FRITZ GREUB, JACK RUFER, AL LEIBACHER, individually and as members of and representatives of Local Union No. 7 of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, a voluntary unincorporated association; ARNOLD BIRD, ED MAIN, JR., LYNN MATTESON, LEO KOZLOSKY, individually and as members and representatives of Local Union No. 227 of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, a voluntary unincorporated association; THEODORE TAYLOR, CHARLES HAGER, HOWARD VOSS, JOHN BESSENBACHER, individually and as members and representatives of Local Union 293 of the International Union of United Brewery, Flour,

Cereal and Soft Drink Workers of America,  
a voluntary unincorporated association,

Plaintiffs,

vs.

ACME BREWING CO., a corporation, et al., etc.,  
Defendants.

ORDER MAINTAINING STATUS QUO  
PENDING APPEAL

It appearing to the satisfaction of this Court from the records, files and pleadings in this case that on August 15, 1946, a certain order was made and entered by this Court granting the [86] motions to dismiss the within action for lack of jurisdiction thereover in this Court, which motions were filed by the defendants Kenneth Nash, individually and as secretary of Local 203 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and said Local 203, and by the defendants, East Side Dist. Co., Los Angeles Brewing Co., a corporation, Stewart McKee & Co., a corporation, Grace Bros. Brewery, Ltd., a corporation, Acme Brewing Co., a corporation, Bohemian Distributing Co., a corporation, Maier Brewing Co., a corporation and Rainier Brewing Co., a corporation, and

It further appearing that the plaintiffs herein have filed their notice of appeal from the said order dismissing said action for lack of jurisdiction, and that said appeal is now pending, and

It appearing to the satisfaction of this Court that this is a proper case wherein this Court may invoke its power to maintain the status quo pending the determination of said appeal,

Now, Therefore, It Is Ordered, Adjudged and Decreed as Follows: That pending the determination of the appeal filed on August 19th, 1946, by the plaintiffs from that certain order entered on August 15, 1946, dismissing the within action for lack of jurisdiction thereover in this Court, the defendants East Side Dist. Co., a corporation, Los Angeles Brewing Co., a corporation, Stewart McKee & Co., a corporation, Grace Bros. Brewery, Ltd., a corporation, Acme Brewing Co., a corporation, Bohemian Distributing Co., a corporation, Maier Brewing Co., a corporation and Rainier Brewing Co., a corporation, their agents, attorneys, servants and representatives, are enjoined and restrained from:

a. discharging or threatening to discharge any employee in the bottlers, brewers, checkers or drivers classifications or any employee covered by the Brewery Contract, [87] for failure to become or remain a member of International Teamsters and Teamsters Locals 896, 893, 888, 884 or 203, as the case may be;

b. enforcing or performing the Teamsters Contract or any term or condition thereof;

c. recognizing the International Teamsters or Teamsters Locals 896, 893, 888 or 203 as the exclusive representative for purposes of collective bargaining of the employees of the defendant employers listed in Paragraph XI of the verified complaint.

in the bottlers, brewers, checkers and drivers classifications or bargaining collectively with said International Teamsters or Teamsters Locals 896, 893, 888, 884 or 203 as such representative;

d. refusing to carry out or perform the provisions of Section 1 of the Brewery Agreement requiring all employees of said defendant employers in the bottlers, brewers, checkers and drivers classifications to become and remain members of the International Union and Locals 7, 227, 229 or 293, as the case may be, as a condition of employment, or the provisions of Section 2 of the Brewery Agreement requiring said defendant employers to obtain and hire new employees through the respective locals to which the employees in the respective classifications are required to belong, or any other term or provision of the Brewery Agreement.

It Is Further Ordered, Adjudged and Decreed that pending the determination of the aforesaid appeal, the defendants Kenneth Nash, individually and as Secretary of Local 203 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and Local 203 be and they hereby enjoined and restrained from

a. acting or attempting to act as the exclusive representative for purposes of collective bargaining of any employees of the defendant employers listed in Paragraph XI of the verified complaint in the bottlers, brewers, checkers or drivers classifications,

b. enforcing or attempting to enforce the provisions of the Teamsters Contract, or any contract,



arrangement or understanding, whereby the employees of the defendant employers listed in Paragraph XI of the verified complaint in the bottlers, brewers, checkers or drivers classifications are required to become and remain members of the International Teamsters and Teamsters Locals 893, 896, 888, 884 or 203, as the case may be, as a condition of employment;

c. interfering by the use of picket lines, boycott, threats of force and violence, force or violence or by any means whatsoever with the enforcement and performance of the Brewery Contract or any term or condition thereof;

d. inducing or attempting to induce by picket lines, boycott, threat of force and violence, force and violence or by any means whatsoever a breach of or failure to enforce or perform the Brewery Contract or any term or condition thereof.

The foregoing shall become effective upon the filing of a bond by the plaintiff in the amount of \$1000.00.

Dated, August 19th, 1946.

/s/ WILLIS,  
Judge.



## EXHIBIT "D"

In the Superior Court of the State of California  
in and for the County of Los Angeles

No. 517,511

INTERNATIONAL UNION, etc., et als,  
Plaintiffs,

vs.

ACME BREWING CO., et als,  
Defendants.

## ORDER

The chief controversy in the action arises from a dispute as to what labor union is the bargaining agent of the employees of defendant employers, each of two groups of local unions claiming to have a bargaining agreement in writing in each of which a closed shop provision is included. An order to show cause and a temporary restraining order were made on August 2, 1946, returnable August 12th, on which date the court entertained and took under submission motions of three groups of defendants to quash the summons, dismiss the complaint and dissolve and discharge the temporary restraining order and the order to show cause.

On August 15, 1946, by minute order, these motions were granted on the ground that the court lacked jurisdiction of the subject matter. On August 19th plaintiffs filed notice of appeal from this order of dismissal, and thereafter on the same day an order was signed by the judge in chambers, purposed to maintain the status quo pending such

appeal. On August 20, 1946, the [90] defendants affected by this latter order moved to vacate the same. This motion was made and heard in open court, argued at length and submitted.

After careful consideration it has finally dawned upon the mental horizon of the judge of this department that no order maintaining the status quo (ordinarily within the powers of a court of equity,—*City of Pasadena v. Superior Court*, 157 Cal. 781; *Pierce v. City of Los Angeles*, 159 Cal. 516; *Merri-mack River Sav. Bank v. Claycenter*, 219 U. S. 527) can be made in this particular case without the court first ascertaining and deciding what is the status quo. This the court has no power to do as it lacks jurisdiction of the subject matter. Any order purporting to preserve the status quo would constitute a preliminary or interlocutory order determining which of the alleged bargaining agreements was in existence and which predominated at the date of filing this action. A reading of the order under attack will reveal the truth of the foregoing statement. It contains matter and positive directions to control the action of the employers in anticipation of a decision which this court has held it has no jurisdiction to make. An order to maintain a status quo is essentially one of a negative nature—a negation—not positive and in effect controlling conduct so as to change a status quo as claimed by one party to a status desired by the other party.

The status quo in this case consists in the dispute as to which of the two groups of local unions

has a written agreement in force and continuing effect. It has been decided herein that the National Labor Relations Board has initial exclusive jurisdiction to decide that dispute. This court has no power to do by indirection what it cannot do directly. It follows that no order attempting or purposing to maintain a status quo can be entered herein. The order made on August 19th is vacated.

Dated, August 21, 1946.

HENRY M. WILLIS,

Judge. [91]

[Endorsed]: Filed June 5, 1947. [93]

At a stated term, to wit: The February Term, A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Saturday, the 7th day of June, in the year of our Lord one thousand nine hundred and forty-seven.

Present:

The Honorable: Paul J. McCormick, District Judge.

No. 6322—M Civil

FRED ELIA IOB, et al.,

Petitioners,

vs.

L. A. BREWING CO., INC., a Corp., et al.,

Respondents.

This cause coming on for further hearing order to

show cause why the petitioners should not be restored to former positions, without loss of seniority; James C. R. McCall, Jr., Assistant U. S. Attorney, appearing as counsel for the petitioners; James M. McRoberts, Esq., appearing as counsel for respondent Los Angeles Brewing Co.; P. H. McCarthy, Jr., Esq., appearing as counsel for respondents Brewers, Maltsters & Yeast Workers Local Union 893 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Thomas Vacca and J. S. Allwine:

Attorney McCarthy makes a statement, Attorney McCall makes a statement, the Court makes a statement, and Attorney McCarthy states he has authorization to enter an appearance for respondents Joint Local Executive Board of California, and Bottlers Local Union 896, and adopting paragraphs 1, 2, and 3 of the motion of respondents Local Union 893, et al., filed heretofore.

Attorneys McCall and Roberts state they have no objection to the appearance of these two entities on this basis and it is ordered to proceed.

Attorney McCarthy argues for the said respondents in support of their motions in opposition to the Court's jurisdiction. The Court makes a statement that there is a question as to whether there is a labor dispute under the record of this case. Attorney McCarthy continues argument. At 11:25 a.m. court recesses.

At 11:35 a.m. Court reconvenes herein and all being present as before, Attorney McCall argues

to the Court for the petitioners. [92] Attorney McRoberts argues for respondent L. A. Brewing Co. in opposition to petitioners' argument. The Court makes a statement and reads excerpts from transcript. Attorney McCarthy makes a further statement in behalf of respondents, et al. Attorney McCall argues further for the petitioners.

The Court rules it has jurisdiction in this case and overrules and denies objection of movants to jurisdiction of the Court; Attorney McCall is directed to prepare written judgment of dismissal of motions on question of jurisdiction. The Court further rules that the injunction requested will not issue at this time and allows Attorney McCarthy until 10 a.m., June 10, 1947, to file answering affidavits in support of respondent unions re Order to Show Cause, at which time the Court will issue injunction in accordance with its finding that the petitioners were unlawfully discharged and are entitled to their positions (unless said affidavits remove conclusion which Court has arrived at) upon application therefor by petitioners.

Attorney McRoberts inquires about proposed objections to interrogatories to respondent Los Angeles Brewing Co. and Court states they may be heard by another judge, if necessary.

In the District Court of the United States in and for  
the Southern District of California, Central  
Division

No. 6322-M Civil

FRED ELIA IOB, et al.,

Petitioners,

vs.

LOS ANGELES BREWING CO., INC., a corpora-  
tion, et al.,

Respondents.

ANSWER OF ADDITIONAL RESPONDENTS,  
THE JOINT LOCAL EXECUTIVE BOARD  
OF CALIFORNIA; BOTTLERS' LOCAL  
UNION NO. 896 OF THE INTERNA-  
TIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSE-  
MEN AND HELPERS OF AMERICA; AN-  
THONY ZEIGLER, BREWERS, MALT-  
STERS & YEAST WORKERS LOCAL UN-  
ION NO. 893 OF THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS OF AMERICA; THOMAS  
VACCA AND J. S. ALLWINE. [224]

Come Now the additional respondents and for  
their Answer deny and allege as follows, to-wit:

First Defense.

Petition fails to state a claim against said addi-  
tional respondents upon which relief can be  
granted.



## Second Defense.

The Court has no jurisdiction over the subject matter of the action.

## Third Defense.

The joinder of the additional respondents at this stage of the proceedings and upon the terms laid down by the Court as to each said additional respondent is a denial of due process and a violation of the Fifth Amendment to the Constitution of the United States.

## Fourth Defense.

Answering paragraphs I to VIII of the Petition incorporated by reference in Amended Petition as Paragraphs I-VIII:

## I.

Additional respondents admit the allegations of paragraph II of said Petition, and in connection therewith do further allege that respondent does ship malt beverage products, as well as alcoholic beverages and wines, to various adjacent states and territories, and does in addition purchase various materials, goods, wares, and merchandise without the State of California, which said materials, goods, wares, and merchandise are shipped to the respondent within the State of California, and products of respondent are shipped out of the State of California, all in substantial quantities and of substantial value.

## II.

Answering paragraph III of the within Petition, additional respondents admit each and every allega-

tion therein contained, save and except additional respondents deny that each petitioner [225] was re-employed by reason of any requirement of law, and in connection therewith do allege that said petitioners, or each of them, were re-employed without reference to any requirement of law, and that each of them were referred to respondent by the particular labor union with which the petitioners were then affiliated and were cleared for re-employment by said labor unions, and did re-enter respondent's employment in the year 1946 after the honorable discharge of each petitioner from the United States armed services.

### III.

Answering paragraph IV of the within petition, additional respondents deny generally and specifically each and every allegation therein contained, and the whole thereof.

Further answering said paragraph IV, respondent alleges that the said named petitioners, to-wit; Samuel M. Dobbs and Waldemar F. Ullrich, did on or about September 21, 1946, of their own volition voluntarily terminate their employment by and with the respondent, and that said named petitioners have not thereafter applied for re-entrance to respondent's employment.

### IV.

Answering paragraph V of the within petition, additional respondents deny generally and specifically each and every allegation therein contained, except so much thereof as may be construed to al-

lege that since November 25, 1946, respondent has declined and refused to accept as an employee said Fred E. Iob by reason of said petitioner's refusal to comply with the terms and conditions of that certain Agreement, a copy of which is attached hereto, made a part hereof, and marked Exhibit "A", particularly Section 1(a) thereof.

Further answering said paragraph V, respondent alleges that it did make and enter into a certain collective bargaining agreement (said Exhibit "A") governing wages, rates of pay, hours [226] of labor, and other conditions of employment on the 28th day of July, 1946, with the Joint Local Executive Board of California, a labor organization, under and pursuant to the provisions of 49 U. S. Stats. 452, 29 U. S. C. A., 151, Section 1, et seq., which said Agreement has been in full force and effect from July 28, 1946, and still continues in effect as modified by that certain Agreement of April 1, 1947, a copy of which is attached hereto, made a part hereof, and marked Exhibit "B".

Further answering said paragraph V of the within petition, additional respondents allege that said petitioner Fred E. Iob has on more than one occasion prior to said September 9, 1946, and November 25, 1946, been offered by the representative of said Joint Local Executive Board of California, and Local Union No. 893 of said Joint Local Executive Board of California; the opportunity of joining and becoming a member of said Local Union No. 893.

V.

Answering paragraph VI of the within petition, additional respondents deny generally and specifically each and every allegation therein contained, except as hereafter alleged, and additional respondents allege that the statistical facts concerning each individual petitioner's employment are as follows:

	Samuel M. Dobbs Bottler	Waldemar F. Ulrich Bottler	Fred E. Iob Brewer
Position held .....			
Date first entered employment .....	July 29, 1937	Feb., 1937	Mar. 8, 1943
Date of termination to enter U. S. Armed forces .....	Jan. 17, 1942	May 9, 1942	Feb. 24, 1943
Date of entry on active duty in U.S. Armed forces .....	Jan. 9, 1942	May 9, 1942	Mar. 9, 1945
Date of discharge therefrom .....	Nov. 30, 1945	Feb. 8, 1946	July 20, 1946
Date of reentry into respondent's em- ployment .....	Jan. 2, 1946	Apr. 29, 1946	(1) Sept. 9, 1946
Hourly Wage Rate (Respondent's Exhibit "A") .....	\$1.36	\$1.36	\$1.48
Weekly Wage Rate (Respondent's Exhibit "A") .....	\$54.50	\$54.50	\$59.00
Termination of Employment .....	Sept. 21, 1946	Sept. 21, 1946	(1) Sept. 17, 1946 (2) Nov. 25, 1946
Weekly loss of wages so caused .....	None	None	None
Loss of wages to date..	None	None	None
Weekly rate of future loss .....	None	None	None

VI.

Answering paragraph VII of the within petition, additional respondents deny each and every all and

singular the allegations therein contained, except so much of said paragraph as may be construed to allege that respondent insisted that it could only conduct its business and have in its employ in the departments covered by Exhibit "A" those persons who had complied with the provisions of said Exhibit "A".

#### VII.

Answering paragraph VIII of the within petition, additional respondents deny each and every all and singular the allegations therein contained, except insofar as Exhibit "A" may provide for a system or practice of seniority.

#### VIII.

Answering paragraph IX of Petitioners' Amended Petition, additional respondents admit each and every allegation therein contained, save and except additional respondents deny that the International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America is an unincorporated International [228] Labor Union and allege that the true name of said International Labor Union is International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America. Deny that Local Unions Nos. 896 and 893 were "chartered by said Teamster International on or about July 28, 1946" and allege the true facts to be that the said Labor Unions are the successors in interest to Bottlers Local Union No. 293 and Brewers, Maltsters and Yeast Workers Local Union No. 7 of the International Union of



United Brewery, Flour, Cereal and Soft Drink Workers of America, suspended A. F. of L. affiliate, subject to the terms and conditions of that certain Agreement entered into by and between said locals and other locals of said International and The Joint Local Executive Board of California and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America dated July 25, 1946, a copy of which is attached hereto, made a part hereof and marked Exhibit "C." Deny that the individual additional respondents are officers of said local labor unions in the capacity stated in the caption or at all. Deny that additional respondent, The Joint Local Executive Board of California, is composed of representatives of various local labor unions of the Teamsters International, except insofar as provided for in said Agreement, Exhibit "C." Deny that said The Joint Local Executive Board of California acts as Collective Bargaining Agent for Teamster Locals whose members are employed by California breweries, including Teamster Locals Nos. 896 and 893. Alleges the said The Joint Local Executive Board of California is the representative for collective bargaining for all of the employees employed in the Brewing, Bottling and Delivery Departments of the respondent Brewing Company under and pursuant to the provisions of 49 U. S. Stats, 452, 29 U.S.C.A. 151 Sec. 1 et seq.

## IX.

Answering paragraph X of Petitioners' Amend-



ed Petition, [229] additional respondents deny each and every, all and singular, the allegations, words and figures thereof, in said paragraph contained and allege the facts to be——

That on March 4, 1887, the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, affiliated with the American Federation of Labor under the name Brewers National Union and on June 1, 1907, its affiliation was revoked and on February 25, 1908, its affiliation was reinstated and in 1933 the convention of the American Federation of Labor adopted an opinion and decision of the Executive Council of the American Federation of Labor which reads as follows:

“In the case of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, vs. The International Union of the United Brewery, Flour, Cereal and Soft Drink Workers of America, the Executive Council is of the opinion and decides that teamsters and chauffeurs in the brewery industry properly belong to and come under the jurisdiction of the International Brotherhood of Teamsters and Chauffeurs.”

The International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America challenged the right, power and authority of the American Federation of Labor to give such opinion and make such decision and instituted an action in the District Court of the United States for the

District of Columbia and on March 17, 1941, the United States Court of Appeals for the District of Columbia entered its opinion and order denying the contention of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America and sustaining the right, power and authority of the American Federation of Labor to give such decision in *Green v. Obergfell*, 121 Fed. (2d) 46. [230]

Shortly thereafter in the 1941 convention of the American Federation of Labor in Seattle, Washington, the American Federation of Labor suspended the affiliation of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America for failing and refusing to comply with said opinion and decision of its 1933 Convention in conformity with the order of the 1939 Convention.

That at no time since its reinstatement in 1908 has the affiliation of the said International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America with the American Federation of Labor been revoked, nor has said International Union been expelled nor has it resigned or in any other manner terminated its affiliation with the American Federation of Labor.

That since 1941 the said International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America continued to operate as a suspended International affiliate of the American Federation of Labor. However, in 1946 without any provision therefor being made in the Constitution

of said International Union, a copy of which is attached hereto, made a part hereof and marked Exhibit "D," a Special Conference was called at Cincinnati, Ohio. That said "Special Conference," without any provision therefor being made in the said Constitution of said International and contrary to and in violation of the provision of said Constitution of said International, by a vote of 128 to 117, ordered a referendum vote of the membership of said International Union to be taken on the question:

"Shall the International Union Affiliate with the C.I.O."

That thereafter, contrary to and in violation of said Constitution of said International and without any provision therefor being made in said Constitution, a referendum vote was taken, 22,933 voting in favor of question presented and 19,241 [231] voting against the question presented. However, California through said Local 7 voted 90-Yes and 450-No, said Local 293 voted 171-Yes and 1511-No, said Local 229 voted 5-Yes and 28-No, and said Local 227 voted 83-Yes and 548-No. The proposal to affiliate with the C.I.O. was rejected in California, the total vote being 349 in favor of affiliating with the C.I.O. and 2537 against affiliating with the C.I.O.

That after said referendum was taken without any constitutional provision therefor and contrary to, and in violation of, said Constitution of said International, a majority of the General Executive

Board members of said International applied for and received a charter on July 18, 1946, from the Congress of Industrial Organizations (C.I.O.).

That thereafter, on July 25, 1946, the said Agreement with the International Brotherhood of Teamsters, Exhibit "C," was made, executed and delivered.

That at its convention of said International Union of the C.I.O. held at Galveston, Texas, from September 9, 1946, to September 14, 1946, inclusive, said International Union of the C.I.O., known as International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, affiliated with the C.I.O.

#### X.

Answering paragraph XI of said Amended Petition, additional respondents deny the allegations in said paragraph contained and allege that until on or about the year 1933, respondent company was required by virtue of the terms and conditions of collective bargaining agreement then in existence to employ in its bottling department only members in good standing of Local No. 293 of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, affiliated with the American Federation of Labor, and in its brewing department only [232] members in good standing of Local No. 7 of said International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, affiliated with the said American Federation of Labor.

That from on or about 1933 to on or about 1939, said requirements were continued by reason of certain status quo agreement entered into by and between said International Union affiliated with the American Federation of Labor and the breweries in Northern and Southern California, including the respondent company.

That on or about 1939 said requirements were continued in full force and effect by reason of certain Working Rules promulgated by The Joint Local Executive Board of California for the breweries in Southern California and another set of such Working Rules for the breweries in Northern California.

That said International Union and said The Joint Local Executive Board of California attempted by proceedings before the National Labor Relations Board to compel the said respondent company and other breweries to sign said Working Rules and thereby conduct said operations by virtue of a signed agreement.

Said International and said The Joint Local Executive Board of California were unsuccessful in said attempt.

That thereafter, proceedings were had before the War Labor Board in an attempt to compel the employees to enter into closed shop agreements, which said proceedings were likewise unsuccessful, the Board, however, ordering the employers, including the respondent company to continue to operate in the future as they had in the past under said Working Rules.



That said proceedings before the National War Labor Board were instituted first against the breweries in Northern California and by agreement the breweries in Southern California, including the respondent company, agreed to be bound by said order.

That thereafter, on or about July 28, 1946, the breweries in Southern California, including the respondent company, entered into a collective bargaining agreement with the said The Joint Local Executive Board of California, copy of which is attached hereto, made a part hereof and marked Exhibit "A" wherein and whereby the employees in the bottling department were required to be members of said additional respondent Local Union No. 896, and the brewers members of said additional respondents Local Union No. 893.

That the petitioners are not now and have not from the beginning of their original employment with the company been members in good standing of International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America or any appropriate local union of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America.

That on or about the 18th day of July, 1946, the petitioners joined and ever since and now are members of the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, chartered by the Congress of Industrial Organizations on July 18, 1946.

That prior to the chartering by the C.I.O. of



said International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers Union on the 18th day of July, 1946, the said petitioners were members in good standing of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, a suspended affiliate of the American Federation of Labor and the appropriate locals thereof.

## XI.

Answering paragraph XII of Amended Petition, additional respondents admit each and every allegation therein contained, save and except additional respondents deny that they have any interest in whether or not petitioners were restored to their former positions by the company, except insofar as such restoration would constitute a breach of the contracts, copies of which are attached hereto as Exhibits "A" and "B" by the company and the denial to the employees of said respondent company of their rights under the provisions of 49 U.S. Stats. 452, 29 U.S.C.A. 151 Sec. 1 and 47 U.S. Stats. 70, 29 U.S.C.A. 101 et seq.

Deny that additional respondents caused the company to discharge the petitioners, except as hereinbefore set out by insisting upon the compliance with the said agreements Exhibits "A" and "B" hereof and upon the refusal of said petitioners to comply with or to take any steps to comply with the terms and conditions of said agreements.

Deny that the respondent company entered into a purported closed shop contract and allege the

company entered into a valid, binding and subsisting closed shop agreement, copy of which is attached hereto and marked Exhibit "A" and that thereafter, a valid, binding and subsisting closed shop agreement was entered into by the company and The Joint Local Executive Board of California, copy of which is attached hereto and marked Exhibit "B."

## XI.

That said paragraph XII recites:

"A copy of said contract of July 28, 1946, is attached as Exhibit 'A' to the Answer of respondent company filed herein on February 18, 1947."

That no copy of said Answer has been served upon the additional respondents and said additional respondents allege that they and each of them are therefore without knowledge or information to form a belief as to the truth of said allegation and they and each of them deny said allegation.

## XII.

Answering paragraph XIII of Petitioners Amended Petition, additional respondents admit each and every allegation therein contained, save and except additional respondents deny that said petitioners would be obligated to pay admission fees and further deny their re-employment rates would adversely affect by said company's new requirement that they become members of said Team-

sters Local Union as a consideration of continued employment in their former positions and allege the true facts to be that membership in said Teamster Local Unions as a consideration of employment is a requirement imposed upon said petitioners by their fellow employees and not the company acting under and pursuant to the rights guaranteed said fellow employees by the provisions of 49 U.S. Stats. 452, 29 U.S.C.A. 151, et seq. And further deny that any discharges occurred by reason of any purported closed shop contract or by reason of the failure of any applicant to be successfully admitted to membership in said Teamsters Locals 896 or 893 and allege the true facts to be that insofar as those who were employed as of the date of said closed shop agreement, Exhibit "A" hereof, dated July 28, 1946, no person has been discharged because of failure to gain admission into either said Teamster Locals 896 or 893 and that in truth and in fact, certain C.I.O. strikers hereinbefore referred to, not only in Southern California but in Northern California, have upon application for membership been accepted into membership and employed in the brewing industry.

### XIII.

Answering paragraph XIV of Petitioners Amended Petition, additional respondents deny each and every allegation, words and figures thereof contained in said paragraph, except so much thereof as alleges:

"All eight of said respondents have con-

strued [236] and applied said July 28, 1946, contract as a 'closed shop' agreement, effective at once against all bottlers and brewers in the Company's employ, who might not be members of said Teamsters Locals 896 or 893, including returned veterans of the armed forces during the reemployment year provided for in Section 8 of the Selective Training and Service Act of 1940."

and allege further that not only have all eight of said respondents, including said additional respondents, so construed said contract, but so have all employers engaged in the brewing industry in the State of California signatories to Exhibit "B," being 80 or more in number and except so much thereof as states:

"... the National Labor Relations Board had not certified the Teamsters Council as the collective bargaining agent for any portion of the Company employees ..."

and alleges further that under and pursuant to the provisions of the National Labor Relations Act, 49 U.S. Stats. 452, 29 U.S.C.A. 151 et. seq., a certification by the National Labor Relations Board is not necessary to impose upon the employer the duty and obligation to bargain with the designated and selected representative of the majority of its employees and *except* "that said Board had not, and did not, prior to December, 1946, determine what unit of the Company's employees might be a proper unit for collective bargaining with the Com-

pany, through such Teamster Council" and alleges further that in National Labor Relations Board cases numbered 21-R-3564 to and including 21-R-3570 and 21-R-3697, being *Acme, et al., v. International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, C.I.O.*, the said National Labor Relations Board did find the unit covered by the contract, Exhibit "A," dated July 28, 1946, an [237] appropriate unit for collective bargaining.

#### XIV.

Answering paragraph XV of Petitioners Amended Petition, additional respondents deny each and every, all and singular, words and figures thereof the allegations in said paragraph contained and allege the true facts to be, the re-employment of Petitioner Iob on September 9, 1946, was the result either of a fraud perpetrated on the said Elmer Schaffer, then Secretary of the Los Angeles branch of said Teamsters Local No. 893 or as a result of a mistaken misunderstanding on the part of the said Elmer Schaffer.

That at the time of the re-employment of the said petitioner Iob, it was represented to the said Elmer Schaffer that a Court Order directing and compelling the re-employment of the said petitioner Iob had been obtained and that he of necessity must consent to the re-employment of the said petitioner Iob.

That in addition to the general denial hereinabove



set out, additional respondents deny specifically that said Local No. 893 recognized and agreed prior to November 25, 1946, that petitioner Iob as a returned veteran of the armed forces was by law entitled to be re-employed and retained in his position as a brewer for the company for a year, notwithstanding his failure to become a member of said Teamsters Local No. 893, and alleges the true facts to be that the said petitioner Iob was entitled by law to be re-employed and retained in his position as a brewer by the company for one year so long as he complied with the terms and conditions of the collective bargaining agreement in effect at the time of his re-employment and during the period of his re-employment, provided, however, that if a condition of said collective bargaining agreement was membership in a certain union that membership must be granted to said petitioner upon the same [238] terms and conditions as it would have granted to any other applicant and that said petitioner may not be discriminated against by reason of his absence in the armed forces in defense of his country. [239]

#### XV.

Answering paragraph XVI of petitioners' Amended Petition additional respondents deny that Petitioners Dobb and Ullrich were prevented from working between September 21, 1946, and October 5, 1946, by the fact that on September 21, 1946, strike was called against the company by the International Union of United Brewery, Flour,



Cereal, Soft Drink and Distillery Workers Union of America affiliated with the C.I.O. and its Locals 296 and 297 and other C.I.O. locals although additional respondents admit that such strike was called and further, the additional respondents deny that said strike was in protest against the firing of bottlers and brewers who had not joined Local 896 and 893 since July 25, 1946, and allege the true facts to be that said strike was called in an attempt to compel the employer to negotiate with said C.I.O. International and local unions and to discharge all employees of said employer who were members of A.F.L. and further, said additional respondents deny that said Petitioners Dobb and Ullrich were prevented from working by the establishment and maintenance of a picket line by said C.I.O. local union at the entrance to the company brewery and allege the true facts to be that the said Petitioners Dobb and Ullrich respected said picket line because of the fact that they were parties to the placing of said picket line around said brewery and parties to the calling of said strike and in addition thereto, some 293 employees of said company's brewery, being practically all of the employees of said company's brewery, repeatedly passed and re-passed, crossed and re-crossed said picket line of the C.I.O. to operate said brewery. Said additional respondents admit that said picket line may have been maintained until March 26, 1947, and may have been discontinued since that date for the reason that they and their members having at all times ignored it, no particular check was made as to the date of its

formal dissolution; and further, additional respondents allege that they and each of them are without knowledge or [240] information sufficient to form a belief as to the truth of the allegations contained in the last three sentences in said paragraph and deny each and every allegation in said last three sentences contained.

#### XVI.

Answering paragraph XVII of petitioners' Amended Petition additional respondents allege that they and each of them are without knowledge or information sufficient to form a belief as to the truth of the allegations concerning alleged conversations with the superintendent of said company's brewery contained in said paragraph and therefore deny each and every such allegation therein contained; and further, answering said portion of said paragraph said additional respondents allege that on November 14, 1946, a notification of the termination of said strike and the request for re-employment of the strikers was made by the said International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, C.I.O. under the name International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, copy of which is attached hereto, made a part hereof and marked Exhibit "E"; and further, additional respondents insofar as the allegations concerning conversations with one Anthony Zeigler, secretary of the Los Angeles Branch of Bottlers Local Union # 896 are

concerned, said additional respondents deny each and every, all and singular the said allegations; and further, said additional respondents deny each and every, all and singular the other allegations in said paragraph contained.

## XVII.

Answering paragraph XVIII of said petitioners' Amended Petition, additional respondents and each of them deny each and every, all and singular, the allegations, words and figures thereof in said paragraph contained. [241]

## Fifth Defense

The Court has no jurisdiction pursuant to 38 U.S. Stats. 738, 29 U.S.C.A. 52, 53; 47 U.S. Stats. 70, 29 U.S.C.A. 101 to and including 115 by reason of the existence of a labor dispute.

## Sixth Defense

The petitioners in the instance case are without clean hands in that they were parties to that certain action instituted by the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, C.I.O., Local 227 of said C.I.O. International and Local 7 of said C.I.O. International and other locals of said C.I.O. International on behalf of all of the members of said Local 227 and Local 7 including the petitioners herein in the Superior Court of the State of California in and for the County of Los Angeles titled International Union of United Brewery, Flour, Cereal and Soft

Drink Workers of America, an unincorporated association, et al., v. Acme Brewing Company, et al., numbered 517511 therein, wherein and whereby said plaintiffs for and on behalf of said petitioners and others sought to obtain from the Superior Court of the State of California a temporary and permanent injunction discharging all employees, veteran and non-veteran, in the breweries in Southern California including the respondent company's brewery who were not members in good standing in said C.I.O. International and locals or who refused to be or become members of said C.I.O. International and said C.I.O. locals and said petitioners are without equity.

#### Seventh Defense

That said petitioners seek to enjoy the benefits of the collective bargaining contracts between the additional respondent, Joint Local Executive Board of California, and the brewery employers including said respondent brewery company including an \$8.00 per week increase in wages negotiated by said additional respondent, Joint Local Executive Board of California in December, 1946, and [242] the other and additional benefits negotiated and obtained for the employees in said California breweries including respondent company brewery by the Agreement Exhibit "B" effective April 1, 1947, at the same time refusing to accept its burdens, i.e., membership in said A.F.L. unions, and said petitioners are therefore without equity.

Wherefore, said additional respondents pray that

petitioners' petition be dismissed and that said additional respondents go hence with their costs.

/s/ P. H. McCARTHY, JR.,  
Attorney for Answering  
Additional Respondents.

Received copy 6/10/47, J. M. McRoberts, Attorney, representing L. A. Brewing Company.

Received copy in U. S. Attorney's office 6/10/47, Gertrude M. Johnson. [243]

State of California,  
City and County of San Francisco—ss.

Wm. H. Ahern, being duly sworn deposes and says: That he is Secretary of Bottlers Local No. 896 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; that he has read the foregoing "Answer of Additional Respondents, The Joint Local Executive Board of California; Bottlers' Local Union No. 896 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Anthony Zeigler, Brewers, Maltsters & Yeast Workers Local Union No. 893 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Thomas Vacca and J. S. Allwine" and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information or belief and as to those matters he believes it to be true.

/s/ WM. H. AHERN.



Subscribed and sworn to before me this 9th day of June, 1947.

[Seal]      /s/ CATHERINE E. KEITH,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission Expires December 16, 1950.

[Endorsed]: Filed June 10, 1947. [244]

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[Title of District Court and Cause.]

ANSWER OF RESPONDENT LOS ANGELES  
BREWING COMPANY, A CORPORATION,  
REFERRED TO HEREIN AS LOS AN-  
GELES BREWING COMPANY, INC.

Comes now the respondent Los Angeles Brewing Company, and for its answer to petitioners' amended petition denies and alleges as follows, to wit:

I.

Respondent hereby adopts and incorporates herein by reference, with the same force and effect as if set forth herein in full, each and all of its answers and allegations made to paragraphs I to VIII inclusive, of petitioners' original petition filed herein on January 23, 1947, to wit: paragraphs I to VII inclusive, of respondent's answer of said original petition filed herein on February 17, 1947.

II.

Answering paragraph IX of petitioners' amended



petition, respondent alleges that it has no information or belief sufficient to enable it to answer either or any of the allegations contained therein, and basing its denial on that ground denies each and several of the allegations contained in said paragraph IX, save and except respondent admits that the International Brotherhood of Teamster, Chauffeurs, Warehousemen and Helpers of America is an unincorporated international labor union, which from time to time issues charters to and recalls them from various local labor unions functioning under its jurisdiction, and that said international union is more familiarly known as the "Teamsters International." Respondent further admits that the various local unions referred to in said paragraph IX, are unincorporated labor unions chartered by the said Teamsters International. Respondent further admits that the respondent Joint Local Executive Board of California is composed of representatives of various local labor unions of Teamsters International, and that it acts as a collective bargaining agent for Teamsters Locals 896 and 893 whose members are employed in California breweries.

### III.

Answering paragraph X of petitioners' amended petition, respondent alleges that it has no information or belief sufficient to enable it to answer either or any of the allegations contained therein, and basing its denial on said ground denies each and every allegation therein.

## IV.

Answering paragraph XI of said amended petition, respondent denies the allegations in said paragraph contained and alleges that until on or about the year 1933, respondent Los Angeles Brewing Company was required by virtue of the terms and conditions of [361] collective bargaining agreement then in existence to employ in its bottling department only members in good standing of Local No. 293 of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, affiliated with the American Federation of Labor, and in its brewing department only members in good standing of Local No. 7 of said International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, affiliated with the said American Federation of Labor; that from on or about 1933 to on or about 1939, said requirements were continued by reason of certain status quo agreement entered into by and between said International Union affiliated with the American Federation of Labor and the breweries in Northern and Southern California, including the respondent Los Angeles Brewing Company; that on or about 1939 said requirements were continued in full force and effect by reason of certain working rules promulgated by the Joint Local Executive Board of California for the breweries in Southern California, and another set of such working rules for the breweries in Northern California.

That said International Union and said Joint

Local Executive Board of California, attempted by proceedings before the National Labor Relations Board to compel the said respondent Los Angeles Brewing Company, and other breweries, to sign said working rules and thereby conduct said operations by virtue of a signed agreement; that the said International and the said Joint Local Executive Board of California were unsuccessful in said attempt; that thereafter, proceedings were had before the War Labor Board in an attempt to compel the employees to enter into closed shop agreements, which said proceedings were likewise unsuccessful, the Board, however, ordering the employers, including respondent Los Angeles Brewing Company, to continue to operate in the future as they had in the past under said working rules; that said proceedings [362] before the National War Labor Board were instituted first against the breweries in Northern California and by agreement the breweries in Southern California, including respondent Los Angeles Brewing Company, agreed to be bound by said order; that thereafter, on or about July 28, 1946, the breweries in Southern California, including respondent Los Angeles Brewing Company, entered into a collective bargaining agreement with the said Joint Local Executive Board of California, copy of which is attached hereto, made a part hereof, and marked Exhibit "A," wherein and whereby the employees in the bottling department were required to be members of said additional respondent Local Union No. 896, and the brewers

members of said additional respondent Local Union No. 893.

This respondent is informed and believes, and upon such information and belief alleges that the petitioners are not now, and have not from the beginning of their original employment with the respondent Los Angeles Brewing Company, been members in good standing of International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America or any appropriate local union of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America.

This respondent is informed and believes, and upon such information and belief alleges that on or about the 18th day of July, 1946, the petitioners joined and ever since and now are members of the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, chartered by the Congress of Industrial Organizations on July 18, 1946.

This respondent is informed and believes, and upon such information and belief alleges that prior to the chartering by the CIO of said International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers Union on the 18th day of July, 1946, the said petitioners were members in good standing of the [363] International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, a suspended affiliate of the American Federation of Labor, and the appropriate locals thereof.

## V.

Answering paragraph XII of said amended petition, this respondent admits that the said added respondents caused this respondent company to discharge the petitioner Fred Elia Iob on the dates claimed by the petitioners as being the dates for said discharge, by insisting upon the compliance by this respondent of its agreement with the said respondent Joint Local Executive Board of California requiring that all of respondent's employees in its brewery department be members in good standing of said Joint Local Executive Board of California, and Local No. 893 thereof. Further answering said paragraph XII this respondent denies that it entered into a purported "closed shop" contract as alleged in said paragraph, but does allege that it did enter into a valid, joint and subsisting agreement with the Joint Local Executive Board of California and Locals 893 and 896, a copy of which said agreement is attached to this answer and marked Exhibit "A"; that thereafter a valid, joint and subsisting closed shop agreement was entered into by this respondent and the Joint Local Executive Board of California and Locals 893 and 896, as of April 1, 1947, a copy of which said agreement is attached hereto and marked Exhibit "B." Further answering said paragraph this respondent alleges that it has no information or belief sufficient to enable it to answer said remaining allegations, and deny the same and the whole thereof on said grounds.



VI.

Answering paragraph XIII of said amended petition, respondent alleges that it has no information or belief sufficient to enable it to answer either or any of the allegations contained therein, and basing its denial on said grounds denies each and every allegation therein. [364]

VII.

Answering paragraph XIV of said amended petition, this respondent denies each and every allegation except so much thereof as alleges as follows:

“All eight of said respondents have construed and applied said July 28, 1946, contract as a ‘closed shop’ agreement, effective at once against all bottlers and brewers in the Company’s employ, who might not be members of said Teamsters Locals 896 or 893, including returned veterans of the armed forces during the reemployment year provided for in Section 8 of the Selective Training and Service Act of 1940.”

Respondent Los Angeles Brewing Company alleges that said respondent, together with all other employers engaged in the brewing industry in the State of California, signatories to Exhibits “A” and “B,” so construed said contracts. Further answering said paragraph this respondent admits the allegation of said paragraph which reads as follows, to wit:

“... the National Labor Relations Board had not certified the Teamsters Council as the



collective bargaining agent for any portion of the Company's employees; and that said Board had not, and did not, prior to December, 1946, determine what unit of the Company's employees might be a proper unit for collective bargaining with the Company, through such Teamsters Council; and that said Board has not yet certified said Teamsters Council as the collective bargaining agent for the Company's employees . . ."

and alleges in response to aid allegation last above set forth that under and pursuant to the provisions of the National Labor Relations Act, 49 U.S. Stats. 452, 29 U.S.C.A. 151, et seq., a certification by the National Labor Relations Board is not a requirement [365] to impose upon this respondent the duty and obligation to bargain with the representatives duly selected by a majority of its employees, and in connection therewith does alleges that in the National Labor Relations Board cases numbered 21-R-3564 to and including 21-R-3570 and 21-R-3697, said cases being generally entitled and identified as "Acme Brewing Company, et al., vs. International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, CIO," the said National Labor Relations Board did find the unit covered by the contracts, Exhibits "A" and "B" attached hereto, to be an appropriate unit for collective bargaining. Respondent is informed and believes and upon such information and belief alleges that at all times from on or about July 26,

1946, to wit: Prior to the execution by this respondent and all other brewery operators in California of said contracts, Exhibits "A" and "B," and at all times thereafter and subsequent thereto, to and including date hereof, the Joint Local Executive Board of California and Locals 893 and 896, have represented a majority of this respondent's employees in its brewery and bottling departments, and that at all of said times last mentioned a majority of its employees in said departments, as well as in similar departments in the breweries in all employer signatories to said contract referred to in this answer, have been and are now bona fide members in good standing of the said Joint Local Executive Board of California and of Locals 893 and 896 respectively.

#### VIII.

Answering paragraph XV of said amended petition respondent denies generally and specifically each and every allegation in said paragraph contained save and except respondent admits that petitioner Fred Elia Iob was reemployed by this respondent as a brewer on or about September 9, 1946, and that he was then discharged by respondent company on September 15, 1946, pursuant to written demand of one Elmer Schaffer then Secretary of said Local 893, on the grounds that the said petitioner Iob was not then a member of said Local 893, and does further admit that the said petitioner Iob was reemployed by respondent as a brewer on November 6, 1946, with the consent and approval

of the said Elmer Schaffer. This respondent does further admit that the said petitioner was thereafter discharged by respondent on or about November 25, 1946, on demand of the said Elmer Schaffer, Secretary of the said Local 893, on the ground that the said petitioner was not then a member of said Local 893. Further answering said paragraph, this respondent alleges that the said petitioner Iob was entitled by law to be reemployed and retained in said position as a brewer by the respondent company for one year, so long as he complied with the terms and conditions of the collective bargaining agreement in effect at the time of his reemployment, and as such collective bargaining agreement might be from time to time during the period of his reemployment, and subject further to a proper discharge of his said duties as a brewer, and does further allege that if a condition of said collective bargaining agreement, or agreements, was membership in a certain union, then the said petitioner Fred Elia Iob was subject to the terms and provisions of said collective bargaining agreement as entered into by this respondent and the representatives of a majority of its employees in the said brewing department. Respondent does deny that it has discriminated against the petitioner Fred Elia Iob in any way, manner, or by any means whatsoever.

#### IX.

Answering paragraph XVI of petitioners' amended petition, this respondent denies that petitioners Dobbs and Ullrich were prevented from

working between September 21, 1946, and October 5, 1946, by the fact that on September 21, 1946, a strike was called [367] against this respondent by the said International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, CIO, its Locals 296 and 297, and its other CIO locals, although respondent admits that such a strike was called, that a picket line was placed about its plant and premises located at 1910 No. Main Street, Los Angeles, California, commencing on or about September 21, 1946, to and including on or about March 27, 1947, and that its products were declared "unfair," that boycotts and other economic reprisals were undertaken by the said International Union last mentioned and its said locals, thereby interfering with this respondent's business. Further answering said paragraph this respondent denies that said strike was in protest against the firing of bottlers and brewers, as in said paragraph XVI alleged, and alleges that the said strike was called as a part of and in connection with an attempt by the said International Union and Locals 296 and 297, to compel this respondent, as well as other breweries in Southern California, to recognize, negotiate with, and hire only members of said International and Local Unions, CIO, in its brewing and bottling departments. Further answering said paragraph this respondent denies that petitioners Samuel M. Dobbs and Waldemar F. Ullrich were prevented from working by the establishment and maintenance of said picket line at the entrance

to this respondent's brewery, and alleges that the said petitioners Dobbs and Ullrich voluntarily respected said picket line and voluntarily terminated their employment with respondent. Further answering said paragraph this respondent admits that in order to go to work said petitioners would have had to cross the said picket line maintained by their own International Brewery Workers local union in which they were there and then members. Further answering said paragraph this respondent is informed and believes, and upon such information and belief alleges that the said petitioners Iob, Dobbs, and Ullrich were offered membership rights in the Joint [368] Local Executive Board of California, Local 893 with respect to the said petitioner Iob, and Local 896 with respect to the other remaining petitioners, and that the said petitioners did refuse and do now refuse membership therein. Further answering said paragraph this respondent denies that on or about September 23, 1946, the company, through its superintendent in charge of employment, informed petitioner Ullrich and others who had not crossed said picket line, that their employment by the company had not been terminated, and that the company would not issue termination slips to such workmen, nor even to the strikers. This respondent does further deny that the company's superintendent at that time or at any other time, informed the petitioners herein that they were still considered employees of the company. Further answering said paragraph this respondent alleges



that on or about September 27, 1946, its said superintendent informed petitioners Ullrich and Dobbs, and one Busick Glenn that the company was in effect holding their employment status in status quo, and that their time cards had not been removed from the company's current payroll records as of that date.

X.

Answering paragraph XVII of petitioners' amended petition, this respondent denies that on or about September 27, 1946, petitioners Dobbs and Ullrich with certain other veterans of the Armed Forces also formerly employed as bottlers, informed any superintendent of respondent company that they were ready and willing to go back to work and would report therefor at the brewery the next morning if such superintendent would permit them to do so, but admits that the said petitioners Dobbs and Ullrich did so inform one of respondent's superintendents, to wit: The superintendent in charge of its bottling department, and does further admit that the said superintendent at said time informed the said petitioners Dobbs and Ullrich that they would have to clear with Anthony J. [369] Ziegler, Secretary and Business Agent of Teamsters Local 896, one of the respondents herein. Further answering said paragraph respondent admits that on or about October 5, 1946, and subsequent to a conference with the said Anthony J. Ziegler with respect to their reemployment by respondent brewery or any other brewery in Southern California, the



petitioners Dobbs and Ullrich again reported to the company's bottling superintendent and informed him that the said Anthony J. Ziegler had refused to clear them for work in the company's brewery, but that they were then ready to go to work in their former positions. Further answering said paragraph this respondent admits that the said superintendent above referred to, upon being informed that the said petitioners Dobbs and Ullrich were not members of said respondent Teamsters Local 896 and had therefore not been cleared for work by the Secretary of said local union, to wit: The said Anthony J. Ziegler, informed them that they could not therefore, and by reason thereof, be considered for reemployment, and words to like effect. Further answering said paragraph this respondent denies generally and specifically all other allegations in said paragraph contained save and except that petitioners Dobbs and Ullrich have not been employed by the respondent company since said October 5, 1946, and save and except this respondent has no information or belief sufficient to enable it to answer the allegations in said paragraph contained with respect to conversations alleged to have taken place between any of the petitioners and a respondent Ziegler, as set forth and contained in lines 22 to 29, of said paragraph XVII, and basing its answer on said grounds denies generally and specifically each and all of said allegations last referred to. Further answering said paragraph respondent denies that the petitioners Dobbs and Ull-

rich were discharged without cause from their restored positions as in said paragraph alleged, and does further deny that the said Dobbs and Ullrich were discharged at any time or times for any cause whatsoever, and does [379] allege that the said petitioners Dobbs and Ullrich voluntarily terminated their said restored positions with respondent company. Further answering said paragraph respondent alleges that on November 14, 1946, a notification of the termination of said strike and the request for reemployment of the strikers was made by the said International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, CIO, under the name International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, copy of which is attached hereto, made a part hereof, and marked Exhibit "C."

## XI.

Answering paragraph XVIII of petitioners' amended petition, this respondent denies generally and specifically each and every allegation of said paragraph contained.

## XII.

By way of affirmative defense to petitioners' amended petition, this respondent does allege as follows, to wit:

### First Affirmative Defense

The Court has no jurisdiction pursuant to 38 U.S. Stats. 738, 29 U.S.C.A. 52, 53; 47 U.S. Stats.

70, 29 U.S.C.A. 101 to and including 115 by reason of the existence of a labor dispute.

### Second Affirmative Defense

The petitioners in the instant case are without clean hands in that they were parties to that certain action instituted by the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, CIO, Local 227 of said CIO, International and Local 7 of said CIO, International and other locals of said CIO, International on behalf of all of the members of said Local 227 and Local 7 including the petitioners herein, in the Superior [371] Court of the State of California in and for the County of Los Angeles entitled International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, an unincorporated association, et al, v. Acme Brewing Company, et al, numbered 517,511 therein, wherein and whereby said plaintiffs for and on behalf of said petitioners and others sought to obtain from the Superior Court of the State of California, a temporary and permanent injunction discharging all employees, veteran and non-veteran, in the breweries in Southern California, including the respondent's brewery, who were not members in good standing in said CIO International and locals, or who refused to be or become members of said CIO International and said CIO locals, and said petitioners are without equity.

Third Affirmative Defense

That said petitioners seek to enjoy the benefits of the collective bargaining contracts between the additional respondent, Joint Local Executive Board of California, and the brewery employers, including said respondent brewery company, including an \$8.00 per week increase in wages negotiated by said additional respondent Joint Local Executive Board of California, in December, 1946, and the other and additional benefits negotiated and obtained for the employees in said California breweries, including respondent brewery company, by the agreement, Exhibit "B" attached hereto and made a part hereof, effective April 1, 1947, at the same time refusing to accept its burdens, i.e., membership in said AFL unions, and said petitioners are therefore without equity.

Fourth Affirmative Defense

Said amended petition fails to state a claim against this respondent upon which relief can be granted. [372]

Fifth Affirmative Defense

The Court has no jurisdiction over the subject matter of the action.

Wherefore, said respondent Los Angeles Brewing Company prays that petitioners' petition be dismissed, and that said respondent go hence with its costs.

HANNA AND MORTON,

/s/ JAMES M. McROBERTS,

Attorneys for Respondent

Los Angeles Brewing Co.

State of California,  
County of Los Angeles—ss.

Charles J. Lick, being first duly sworn deposes and says:

That he is Vice President of respondent Los Angeles Brewing Company in the above-entitled action; that he has read the foregoing Answer and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

/s/ CHARLES J. LICK.

Subscribed and sworn to before me this 18th day of June, 1947.

[Seal] /s/ LAURA TEETER,

Notary Public in and for Said  
County and State. [374]

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## EXHIBIT "B"

### CONTRACT

Joint Local Executive Board of California, comprising Brewery Drivers & Helpers Local Union No. 203; Brewery Drivers & Helpers Local Union No. 683; Brewery Shipping, Receiving Clerks and Checkers Local Union No. 884; Brewery Drivers & Helpers Local Union 888; Brewers, Maltsters &

Yeast Workers Local Union No. 893; Bottlers Local Union No. 896, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Effective April 1st, 1947.

### Agreement

Whereas, the Joint Local Executive Board of California, Locals Nos. 203, 683, 884, 888, 893, and 896 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, state and allege that as of the date hereof, said Joint Local Executive Board of California is the designated and selected representative of the employes in the brewing, bottling, delivery, shipping and receiving departments of all the breweries and distributing companies for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment which said specific statement and allegation constitutes the material consideration to the employers.

Now, Therefore, after presentation of evidence of such representation and in consideration of the mutual promises herein contained, it is agreed:

Section 1. (a) Only members in good standing who are members of local union 893 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, be employed as brewers in the brewing departments, including all basements, platforms, and wash houses used in connection with the operation of the brewing department.

(b) Only members in good standing who are



members of Bottlers local union 896 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America shall be employed as bottlers in the bottling department at the brewery, including all basements, platforms, storage and yards used in connection with the operating of the bottling departments in positions where bottlers are now employed, or in those [399] branches where employer may require the employment of a steady crew to perform bottlers work.

(c) Only members in good standing who are members of local unions nos. 203, 683, and 888 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, shall be employed as shipping drivers and helpers, special delivery drivers and helpers, bottle route drivers and helpers, keg beer drivers and helpers, within jurisdiction of locals Nos. 203, 683, and 888.

(d) Only members in good standing who are members of Local union 884 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, shall be employed as checkers and shipping clerk in the shipping department and receiving departments conducted at Brewery premises, or in any warehouses adjacent thereto.

(e) Brewmasters and assistant brewmasters, and foremen who perform no manual labor, and employes in managerial capacity of any kind or nature shall not be covered by any term or provision of this contract and may be employed regardless of union membership.

(f) This contract shall cover only employes who perform their services principally within the State of California for the respective employers.

(g) Provided, however, in those cases in which the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, permits mixed branches, i.e. branches in which members who normally would belong to local unions 203, 683, 888, 884, 893, and 896 but are members of a mixed branch of any of said local unions, only members in good standing who are [400] members of such mixed branch of any said local unions shall be employed in the capacities hereinabove set out, and provided further that all unloading, and loading, of brewing materials, supplies, and beer containers in and from railroad cars within 2 blocks of the brewery premises shall be done by members of the aforesaid unions or branches thereof.

Section 2. All employes shall be obtained and hired through the respective local unions, and branches thereof to which the employes in said department are required to belong, provided, however, that should respective local unions be unable to provide the necessary satisfactory employes, then and in that event, said employes may be obtained from any source, provided, however, that said employes so obtained through other sources must be cleared through the union office within 24 hours (excluding Sundays and holidays) after commencing work, and said unions shall deliver a temporary clearance to such employe.

The Employer in those cases where he is required hereunder to employ only members of the respective unions hereinbefore mentioned except local 896, shall, in all cases involving regular employes as distinguished from employes required for temporary employment, have the right of selection from the list of unemployed union members or temporary men, which list shall be maintained by and furnished by the Secretary of such local union to the employer on request.

Section 3. No employe shall be discharged or discriminated against for upholding union principles, nor may any employe be discriminated against or discharged who engages in work for and under the instructions of said local unions Nos. 203, 683, 884, 888, 893 or 896, or any branches [401] of same, or either, or all of them, and said employes shall be permitted to take such time as may be necessary to discharge these duties or any of them, provided however, that said employe shall be paid no compensation whatsoever by employer for said time devoted to the performance of said duties, or any of them.

Section 4. (a) Sickness shall be no cause for discharge and any employe who shall cease work because of sickness, provided that such sickness does not last longer than 6 months and also provided, that said employe is capable of performing his usual duties. shall upon recovery, be entitled to and receive his former position.

(b) Injuries received through accident in performance of duties shall be no cause for discharge

and any employe injured through accident shall be entitled to receive his former position upon recovery from said accident, irrespective of the period of time which may elapse between his injury and recovery provided that said employe is capable of performing his usual duties.

(c) The employer shall have the right to call in temporary help to discharge the duties of an employe who is on the sick or injured list. Upon the return of such regular employe, employer shall be entitled to discharge such temporary employe as may have been fulfilling the duties of said sick or injured employe regardless of the duration of such sickness or injury.

(d) Any employe, other than a temporary employe, leaving his position as an inductee of the Armed Land and Naval Forces of the United States under the provisions of the "Selective Training Service Act of 1940," shall, upon completion of their period of training under Section 3 (b) of that Act or that period of enlistment, be restored to [402] their former positions, according to seniority held at the time of induction, provided that they are capable of performing the duties of such position and have reported for work within 90 days following their discharge from such service. Upon the reinstatement of any such person to his position, employer shall be permitted to discharge such employe as such returned serviceman shall displace.

Section 5. (a) The employer shall install in the respective department all legally required safety appliances and first aid materials to insure em-

ployes against danger to health, life and limb, and shall furnish a sanitary washroom, and dressing room with lockers, or the equivalent thereof.

(b) The employes shall be furnished, free of charge, the use of a a rubber suit, rubber gloves and rubber boots for the purpose of cleaning the shops, or equipment, and in all cases involving the use of caustics.

Section 6. Good employers beer, for consumption on the premises, shall be furinshed to the employes free of charge, once during the morning shift, at noon, in the middle of the afternoon shift, and at quitting time.

Section 7. All things being equal, union made materials and machinery shall be given preference.

Section 8. Union labels of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, shall be supplied to all breweries that comply with this contract.

Section 9. Only one controlling owner, controlling shareholder, or bona fide partner shall perform any of the work in any of the departments covered by this contract. Foremen or assistant [403] foremen shall do no work in shops unless they are members of the union. Nothing, however, in this agreement shall be construed as to interfere with the right of the foremen to look after the machinery or assist at short intervals whenever a man is lacking, provided in such case application is made to the union for a man.to fill the vacancy.



Section 10. No employe shall have his wages reduced or his hours of labor increased by reason of this contract. Any commission paid is not to be considered wages.

Section 11. (a) All work done in addition to the regular 8 (eight) hours daily work shall be considered and paid for as overtime. Overtime must be paid for and shall not be taken out nor balanced by lay-off.

(b) All overtime and Saturday work shall be paid for at the rate of time and one-half, it being understood that a work day or shift starting on a straight pay basis shall be completed as such.

(c) All work performed on Sundays and holidays shall be paid for at the rate of double time provided that no employe covered hereby may be employed for less than four hours on such days.

(d) The minimum weekly wages specified hereinafter are for a full week's work as herein provided and it is definitely understood that on days on which no work is performed for any reason, otherwise than on holidays or election days hereinafter specified, any employe shall receive no compensation.

Section 12. The following shall be considered legal holidays: New Years Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. One additional day shall be granted as a holiday and shall be either Admission Day or Armistice Day, [404] and the day shall be determined in Northern and Southern California by agreement between the Joint



Local Executive Board and a majority of Breweries in each said respective territory.

(a) There shall be no deduction of pay as a result of not working on these holidays and if any employe is required to work on the above holidays he shall be compensated at the rate of double time.

(b) When the above-mentioned holidays fall on Sunday, the following Monday shall be considered a holiday.

(c) Any employe of local unions No. 203, 683, 884, 888, 893, and 896 who is laid off on election days: City, County, State or Federal, shall be granted a straight day's pay for same.

(d) To qualify for holiday pay the employe must work his work day before and after the holiday unless the employe is excused by the employer for bona fide reasons.

Section 13. All employes, upon completion of 45 weeks of continuous employment for the same employer within a 12 (twelve) months consecutive period shall be entitled to one week's vacation with full pay. Any employe who has not qualified for a vacation within a period of twelve (12) consecutive months may qualify within a period of twenty-four (24) consecutive months. Employes shall be allowed not in excess of 60 (sixty) calendar days on account of illness or accident during said twelve months period, and the same shall not constitute a violation of the provisions of this paragraph. It is the intention of the employer that vacations be taken from May to September if possible. Seni-

ority shall prevail relative to choice of vacation time.

(a) Each such employe after 2 (two) consecutive [405] years of continuous employment with the same employer shall during continuous service thereafter with such employer be entitled to two weeks' vacation with pay at the end of any 45 (forty-five) weeks worked within any consecutive 24 (twenty-four) months. An employe shall become entitled to his vacation in no period short of 52 (fifty-two) weeks and no time of employment worked in excess of 45 (forty-five) weeks in any consecutive 52 (fifty-two) weeks of employment can be carried over as a credit to the next vacation.

(b) Compensation for said vacation to be paid at the rate provided for on shift on which employe worked.

(c) Disputes arising through claims for vacations, not otherwise specified herein, shall be adjusted by mutual agreement between the employer and the union.

Section 14. The employer firms shall at all times have the entire right of selection and placing of men or the rearrangement of employes, regardless of seniority.

Section 15. The loading and unloading of trucks driven by an employe of a brewery from a platform or space mutually agreed upon shall be considered driver's work.

Section 16. Any literature distributed by any employe without the consent of the employer will

give the employer the right to discharge immediately any such employe, providing that such literature is distributed during working hours.

Section 17. There shall be no apprentices or learners in any department except the brewing, malting and syrup departments.

Section 18. Employes discharged for embezzling employer's money or property shall be [406] dropped from the membership roll of the union to which they belong, after having had a fair trial by said union and having been found guilty. Pilfering of cases or inducing bottlers or loaders to give drivers extra bottles shall be regarded as embezzlement and dealt with as above set forth. The furnishing of surety bonds against embezzlement shall be left to employer's discretion, provided, however, that said employer shall be required to pay the premium on said bond, and provide dfurther that asid bond shall in no way be construed as affecting said employe's obligation to said employe's union.

Section 19. In the event that any employe from whom a surety bond shall be required by the employer cannot provide \$500 (Five Hundred) Dollars cash, or cannot obtain from or qualify with a representative and regularly established surety company doing business in California the requisite surety bond, the employer may at his option refuse to accept such person as an employe.

Section 20. Differences that may arise as to the

interpretation of this contract shall be referred to a Board of Arbitration consisting of two members of the union and two representatives of the employer firm; said Board shall meet within two weeks from the time that a demand for arbitration has been made. Should these four fail to agree, they shall together elect a fifth disinterested party, and the decision of the majority of the whole shall be final and binding upon both parties.

Section 21. Should any of the plants become inoperative because of fire, earthquake, or other Act of God, all provisions contained herein shall apply only to persons employed in actual capacities governed by this contract.

Section 22. It is further agreed that this contract may be altered, changed, or deviated from by the written agreement of the Joint Local Executive Board of California and the employers and the Joint Local Executive Board of California alone, for the unions and employes, may enforce this agreement.

Section 23. This contract shall be in full force and effect from the date hereof to March 31, 1948, inclusive, and shall continue thereafter from year to year unless a written notice of intent to change or terminate the same shall have been given for at least 30 (thirty) days prior to any March 31st anniversary date of this contract. Such notice shall be given in the case of employes by the Joint Local Executive Board of California to any employer herein and the California State Brewers In-

stitute or in the case of employers by any employer herein or the California State Brewers Institute to the Joint Local Executive Board of California.

### Brewers

Section 24. Eight (8) consecutive hours, exclusive of an interval of one hour for meals, shall constitute a day's work and five consecutive days (respectively 40 hours) shall constitute a week's work, except Saturday when 5 (five) hours and 20 (twenty) minutes shall constitute a day's work. The regular working day shall commence on Monday. The regular working day shall not commence before 7:00 a.m. and shall not continue after 6:00 p.m. All work done before 7:00 a.m. and after 6:00 p.m. shall be considered overtime; provided, however, that the night man or men employed in the brew-house shall work eight (8) consecutive hours, twenty minutes to be allowed for lunch, but the time at which this work shall commence shall be left to a mutual understanding between the employer and employes concerned. First men and coopers are governed by the contract [408] relating to working time and pay.

Section 25. One apprentice shall be permitted in each brewery employing not less than 5 (five) members of local union No. 893. In case that the number of men employed shall equal thirty (30) members, then a second apprentice may be employed, and with 40 (forty) members, a third one, and one to every additional thirty. Apprentices shall be governed by the rule of the union and shall be



instructed in all branches of the trade for a term of not less than two years. Apprentices may work overtime, provided the shift on which they are employed is working overtime. They shall not be less than 18 years of age nor more than 25 years at the beginning of their terms of apprenticeship. Apprentices must be accepted by the union as members before starting their apprenticeship.

Section 26. It is agreed that no new or additional apprentices may be employed in brewing, malthouse and syrup departments, as long as the employes in said departments are being laid off in rotation, and as long as 5 (five) per cent of the membership of local union 893, permitted to work in said departments are on the out of work list.

Section 27. Provided, further, however, that sons of the brewery and malt house proprietors may be employed as apprentices at any time in breweries controlled by their parents as long as they do not replace a member of local union 893.

Section 28. The wage paid in all breweries shall not be less than \$67.00 (sixty-seven dollars) per week for the first shift, \$69.00 (sixty-nine dollars) for the second shift and \$71.00 (seventy-one dollars) for the third shift. The wages paid to apprentices shall be not less than \$52.00 (fifty-two dollars) per week for the first shift for the first year, \$54.00 (fifty-four dollars) for the second shift [409] and \$56.00 (fifty-six dollars) for the third shift. \$54.00 the second year, \$56.00 (fifty-six dollars) for the (fifty-four dollars) per week for the first shift for



the second year, \$56.00 (fifty-six dollars) for the second shift and \$58.00 (fifty-eight dollars) for the third shift. The wages shall be paid in full weekly, in lawful money of the United States.

Section 29. Should it become necessary during the dull season to lessen the working force, the men may be laid off in rotation in an impartial manner for not longer than one week at a time and it is expressly understood that there should be no laying off for any fractional part of a day or week. First men or apprentices are included in this lay off system. In case brewers are laid off, coopers shall not be permitted to do brewers' work. Temporary men must be laid off before rotation lay-offs begin.

Section 30. In breweries situated in Northern California, the average number of brewers employed in a brewery during April and May of each year shall be considered the minimum number of brewers to be employed for the succeeding year, subject to the usual layoff system; that is to say, the employer has the right to dispense with men during April of each year, and the number of brewers to be employed for the succeeding year must not be less than the average number of brewers employed during April and May. Should such a reduction be contemplated, strict seniority rights shall prevail and the apprentices' seniority shall start from the time of their acceptance as journeymen. The employer also has the right to employ extra union men during the months of July, August and September.

(b) In breweries situated in Southern California, should it become necessary during the dull season to lessen the working force, the men may be laid [410] off in rotation in an impartial manner, for not longer than one week at a time, and it is expressly understood that there should be no laying off for any fractional part of a day or week. The first men and working foremen and apprentices are included in this layoff system, arranged by employer and shop steward, and the local union. The employer also has the right to employ extra workmen during the months from April 1st to October 30th. Any man working after October 30th shall be considered a steady employe.

Section 31 (a). When men are varnishing tanks or engaged in work with explosives or inflammable materials within closed tanks, the men doing this work must have a watchman on the outside of the tank at all times and safety apparatus shall be inspected and placed in perfect condition before the men go into the tank to perform the above work.

Section 32. Preparing for coating and coating of vats is to be considered brewers' work when done by breweries. If work is contracted out, such contracts must take into consideration this fact and provide such work must be done by brewers.

Section 33. No man shall be forced to pile full half barrels two high unassisted.

## Bottlers

Section 34. Eight consecutive hours exclusive of an interval of one hour for meals shall constitute a day's work and forty hours shall constitute a week's work. The regular working day for the day crew shall not commence before 7:00 a.m. and shall not continue after 6:00 p.m. If two crews are employed on the one unit of machinery the regular working day of the night crew shall be 8 (eight) hours and shall commence at the conclusion of the working day of the day crew, providing [411] that no overtime is worked. It shall be optional, however, to arrange the hours of the night crew to the mutual satisfaction of the employer and employee. The regular work week shall commence on Monday and shall end on Friday at the conclusion of the regular day's work. All plants shall be permitted to work overtime whether operating steadily or not. On Saturday bottlers, if worked, shall be worked a minimum of 5 (five) hours and 20 (twenty) minutes payable at the rate of time and one half. Proprietors or foremen shall have the right of determining the number of men required to work such overtime and all overtime shall be equally divided among members of the shop.

(b) It shall be permissible to have men report for work before 7:00 a.m. to load out drivers on special trips or long hauls.

Section 35. The firms will operate all available lines of bottling machinery during the day shift before the establishment of night shifts, providing

that where certain lines are incapable of filling particular types of bottles or containers or where because of superannuated equipment a material divergency of production would result, this provision shall not apply.

Section 36. The minimum weekly wage shall not be less than \$62.50 weekly (sixty-two dollars and fifty cents) for the first shift, \$64.50 (sixty-four dollars and fifty cents) for the second shift and \$66.50 (sixty-six dollars and fifty cents) for the third shift. Wages to be paid in full, weekly, in lawful money of the United States of America.

Section 37. Should dullness of trade necessitate a layoff, the employes shall be laid off according to seniority not less than one day at a time nor more than one day per week, except in case of breakdown. If a breakdown occurs in the forenoon, [412] the men shall work the morning out; if a breakdown occurs in the afternoon the men shall work the day out. Should a reduction of the working force become necessary to comply with the provisions of this section as to the minimum crew and time worked, the first man hired shall be the last man laid off; further if help is again called, the last man or men in point of service, who were laid off, shall be the first to be re-hired. The employer has the right to increase or reduce the force should business necessitate. All employes shall receive equal chances at any spare work performed on days that shop is not bottling. However, it is permissible to rotate

the men irregularly in cases where special work is done for which certain men are more adaptable.

(b) It is agreed that where extra crews are required for temporary work, the employer may work such crews 4 (four) consecutive days, excepting Saturday or Sunday, within 2 (two) weeks' period, provided that existing crews are working five days per week.

Section 38. The loading and unloading of cars of beer and bottle house supplies, on and adjacent to premises, and all work performed on same shall be considered bottler's work. Loose bottles in car-load lots shall be crated and handled by union bottlers, provided that such car is spotted within two blocks of the bottle house.

Section 39. No employe shall be required to change shifts during the calendar work week, unless such employe shall have had a period of at least 12 hours between the conclusion of the last shift worked and the commencing of a new or different shift to which he may be assigned. Provided, that for overtime work, any man available who has not worked the preceding 12 (twelve) hours may be used. It shall be permissible in any [413] event to change the employe or employes shift at the end of each work week.

#### Drivers

Section 40. Eight consecutive hours, exclusive of an interval of one hour for meals, unless a shorter meal time is agreed to, shall constitute a day's work



and 5 days (respectively 40 hours) shall constitute a week's work. The regular work week shall commence on Monday and shall end on Friday inclusive.

Drivers and helpers may begin work between 7:00 a.m. and 8:00 a.m. and one special driver and helper if needed to begin at 9:00 a.m. No driver or helper shall start before 7:00 a.m. unless in case of emergency, and time before 7:00 a.m. shall be paid as overtime. All work performed after 8 hours worked after 7:00 a.m. shall be paid for at the time and one-half rate, and not to be balanced by lay-off.

Shipping Drivers and Helpers may work on Saturday provided that the hauling is to wharves, freight sheds, or loading cars for shipping and highway hauling, and such Saturday work is to be paid for at the rate of time and one-half. The work week for shipping drivers and helpers may begin on Monday or Tuesday and Saturday work shall constitute a minimum of five hours and 20 minutes.

Keg route drivers and helpers and bottle route drivers and helpers shall not be required to do any shipping after servicing their routes, but may do so by mutual agreement.

Not more than two special delivery trucks may work on holidays for not less than four hours.

Keg and bottle beer may be hauled in the same truck.

Section 41. The minimum scale of wages shall not be less than \$66.00 (sixty-six dollars) per week



for keg beer drivers, bottle route drivers, shipping and special drivers, and \$63.00 (sixty-three dollars) per week for helpers on keg beer trucks, bottle beer trucks and shipping trucks. Night loaders shall be paid \$68.00 (sixty-eight dollars) for second shift. Wages to be paid in full, weekly, in lawful money of the United States of America.

Section 42. All trucks directly operated by the employers for transportation of malt beverages or containers shall be operated by local unions Nos. 203, 683, and 888.

If transportation truck or trucks are forced to stay over night in any town, the employer shall pay for the driver's room and board for the night of the layover.

Section 43. The washing of trucks operated by the employer if done on the premises shall be done by employes hired to perform such work, and who must be members of local unions Nos. 203, 683, or 888. The minimum wage shall be \$63.00 (sixty-three dollars) per week for the first shift, \$65.00 (sixty-five dollars) for the second shift, and forty hours shall constitute a week's work. Employes may start this work week on Monday or Tuesday and if employe works on Saturday, five hours and twenty minutes shall constitute a day's work.

Section 44. Drivers, upon authorization of credit department of employer, having left beer on credit, shall receive receipt for same and he shall not be held responsible for payment thereafter.

Section 45. The loading and unloading of trucks driven by an employe of a brewery from platform or space mutually agreed upon shall be considered driver's and helper's work.

Section 46. Beer drivers and helpers may be laid off not less than one week nor more than one week at a time impartially and in rotation. In winter months where it becomes necessary for keg routes and bottle routes, for some of the firms, to work four days per week, such schedule shall begin on November first and end March first.

Section 47. Extra shipping drivers and helpers shall be furnished by the union for the purpose of getting out rush orders. Such extra help can be dispensed with when the work for which they have been engaged is finished. Extra drivers or regular drivers and helpers who have been temporarily laid off shall not be called into service for a fractional part of a day unless they be given a full day's pay for same. If a rush order or an unavoidable accumulation of empties require more shipping facilities than employer has vehicles to handle, then in that case draying firms may be employed to complete such work.

Section 48. Employers requiring their drivers or helpers to wear uniforms, caps or hats advertising their products or firm's name shall furnish such uniforms, caps or hats with union labels, together with regular laundry of same, free of charge to their employes.

Men shall report for work clean and presentably dressed to meet the public or pass public inspection.

### Shipping Clerks

Section 49. Eight consecutive hours, exclusive of an interval of one hour for meals, unless a shorter meal time is agreed to, shall constitute a regular day's work, and five consecutive days of such eight consecutive hours shall constitute a week's work. The regular day shall not commence before 7:00 a.m. and shall not continue after 6:00 p.m. The starting time of the first shift may not be later than 9:00 a.m. in case of an employe working [416] with an hour lunch period and 9:30 a.m. when employe works under a half hour lunch period, except where arranged to the mutual satisfaction of employer and employe. A second shift may be started at any time after three p.m. and work performed during such shift shall be compensated at the second shift rate. The employer shall have the right to determine the number of men to work overtime, and overtime shall be divided among the men as equally as possible. However, it is permissible to rotate the men irregularly in cases where special work is to be done for which certain men are more adaptable. The regular work week shall commence on Monday and shall end on Friday, at the conclusion of the regular day's work. Any member working Saturday shall be hired for not less than five hours and twenty minutes which shall be paid for at time and one-half.

Section 50. The wages shall be paid weekly, in lawful money of the United States of America as follows:

For receiving and shipping clerks and checkers, a minimum weekly wage of not less than \$62.50 (sixty-two dollars and fifty cents) for the first shift and \$64.50 (sixty-four dollars and fifty cents) for the second shift and \$66.50 (sixty-six dollars and fifty cents) for the third shift.

Section 51. Should a dullness of trade necessitate a lay-off, the employes shall be laid off in an impartial way in rotation, according to seniority, but no one shall be laid off longer or less than one (1) week at a time. Should permanent reduction in the working force become necessary, the employes shall be laid off impartially according to seniority.

Section 52. If during the busy season, it is necessary to employ extra help, such help shall be employed through local 884. [417]

In Witness Whereof, the parties have hereunto set their hands and seals by their respective representatives, this first day of April, 1947.

For the Employers:

California State Brewers Institute.

Signed: James G. Hamilton, Secretary, comprising

Acme Brewing Co., S. F. & L. A.

Bohemian Distributing Co., L. A. & San Diego.

General Brewing Co., S. F.

Rainier Brewing Co., S. F. & L. A.

San Francisco Brewing Corp., S. F.

Regal Amber Brewing Co., S. F.

Maier Brewing Co., L. A.

Stewart McKee Brewing Co., L. A.

Aztec Brewing Co., San Diego.

Pacific Brewing & Malting Co., San Jose.

Grace Bros. Brewing Co., Santa Rosa.

Los Angeles Brewing Co.

Signed: Charles J. Lick, Vice-President &  
General Manager.

Grace Bros. Brewing Co., L. A.

Signed: H. S. Johnson.

Fresno Brewing Co., Fresno.

Signed: H. S. Johnson.

Buffalo Brewing Co., Sacramento.

Signed: H. S. Johnson

Golden West Brewing Co., Oakland.

Signed: Thos. G. Walker, Gen. Manager.

El Dorado Brewing Co., Stockton.

Signed: A. J. Rothenbush, Pres.

Anheuser-Busch Co., S. F. & L. A.

Pabst Sales Co., S. F. & L. A., Long Beach  
& San Diego.

For the Employers:

Southern California Beer Distributors Asso-  
ciation. [418]

Signed: B. C. Fields.

comprising

A. B. C. Dist. Co., Santa Monica, Calif.

Acme Dist. Co., Pasadena.

Antelope Valley Dist. Co., Lancaster.

Associated Brewers Dist. Co., L. A.  
Bohemian Dist. Co., Santa Monica.  
Catalina Beverage Co., Avalon.  
Associated Brewers Dist. Co. Inc., Long Beach.  
General Dist. Co., L. A.  
Globe Bottling Co., L. A.  
Golden Glow Beverage Co., Long Beach.  
Gray & Gray, Venice.  
Home Ice & Cold Storage Co., Los Angeles,  
Long Beach & Santa Ana.  
Kelly Beverage Distributors, Santa Monica.  
Park Beverage Co., Glendale.  
Progressive Wholesale Liquor Corp., Los  
Angeles.  
Southern Calif. Brewers Dist. Co., Pasadena.  
R. E. Spriggs, L. A.  
Sunset Beverage Co., Culver City.  
Valley Beverage Co., Pacoima.  
Mr. L. M. Brodie, Lancaster.  
Mr. Bryan Cone, San Fernando.  
Harry B. Cooper, Los Angeles.  
Mr. Jack Mason, Lancaster.  
American Wholesale Dist. Co., L. A.  
Beverley Beverage Co., L. A.  
Candiotto Dist. Co., L. A.  
James Ingram, L. A.  
Merchants Wholesale, L. A.  
Saul Rogers Dist. Co., L. A.  
Sanitary Beverage Co., L. A.  
Joseph Stool Dist. Co., L. A.  
Wallack Dist. Co., Santa Monica.



West Coast Beverage Co., Venice.  
Whittier Dist. Co., L. A. [419]  
Crescent Commercial Co., L. A.  
Red Top Dist. Co., L. A.  
Peerless Dist. Co., L. A.  
Bard Dist. Co., L. A.  
Brewery Products, North Vernon.  
General Liquor, W. Santa Barbara.

For the Employers:

Sacramento Valley Associated Industries.  
Signed: John T. French, Manager.  
comprising  
Acme Beverage  
Sterling Brands  
Cal-Hi  
Valley Dist. Co.  
Al. Saccani Dist. Co.  
John J. Bottano Dist. Co., Sacramento  
Delta Dist. Co., Stockton, Calif.  
Signed: Frank Nolder  
Valley Beverage

For the Distributors:

Oakland & Vicinity  
Kramm Dist. Co., Oakland  
A. R. Markstein Co., Oakland  
Richmond Beverage, Richmond  
Better Brands, Oakland  
Golden Brand Products, Oakland  
C. Vitakes  
Stow Beverage, Walnut Creek

Garms Dist. Co.

Diamont Bros., Hayward

**For the Distributors:**

San Francisco & Vicinity

Rossi Dist. Co., S. F.

Golden Brands, S. F. & San Mateo

Walker Beverage, Redwood City

Premium Products, S. F. [420]

General Enterprise, S. F.

Consumers Dist. Co., S. F.

Cervelli Dist. Co., S. F.

Monterey Dist. Co., S. F.

Marino Dist. Co., S. F.

Haas Bros., S. F.

Denver Bottling Co., S. F.

**For the Employees:**

Joint Local Executive Board of California

Signed: Martin Christen, Secretary

Brewery Drivers & Helpers Local Union No.

203, L. A.

Signed: George Leonard

Brewery Drivers & Helpers Local Union No.

683, San Diego

Signed: Larry M. Smith [421]

Brewery Shipping, Receiving Clerks &

Checkers Local Union No. 884.

Signed: Clay Bissant, Secretary, S. F.

Wm. Payne, Secretary Branch 1, L. A.

Brewery Drivers & Helpers Local Union No.

888

Signed: Martin Christen, Sec., S. F.

Chas. Wood, Sec., Branch 3, Oakland

Richard Lamb, Sec., Branch 4, Sacramento

A. E. Biewend, Sec., Branch 5, Stockton

Brewers, Maltsters & Yeast Workers Local

Union No. 893

Signed: Henry Jenichen, Sec., S. F.

Signed: Anton Schirle, Sec., Br. 2, San Jose.

Signed: Fred Parker, Sec., Br. 3, San Diego

Signed: Elmer Schaeffer, Sec., Br. 4, Los

Angeles

Signed: Wm. Vercoe, Sec., Br. 5, Fresno

Signed: Alois Bernauer, Sec. Br. 8, Santa Rosa

Bottlers Local Union No. 896

Signed: Wm. H. Ahern, Sec., S. F.

Signed: A. Clifford, Sec., Br. 2, Sacramento

Signed: Anton Zeigler, Sec., Br. 3, L. A.

Signed: August Wallner, Sec., Br. 6, Oakland

### EXHIBIT "C"

November 14, 1946

Los Angeles Brewing Co.

1910 North Main Street

Los Angeles, California

Gentlemen:

On behalf of the following named employees and as their representative for collective bargaining, the undersigned applies for their immediate reinstatement to their former or substantially equivalent positions, respectively. Each of the said em-

ployees is now ready, able and willing to resume his job for you in the same or substantially equivalent capacity as that at which he formerly worked.

Howard Vause	Easton C. Anderson
Richard Jacobson	O. Parker
Jim Clements	Selden Johnston
Bernard J. Vieda	Samuel Dobbs
Lyman Garrell	Youl Holman
Parker	Fritz Heissler
Leonard Loomis	Harry Fisher
John Bernardie	Glenn Busick
Ernest Merz	Waldemore Ullrich
B. Reichelb	George Jones
Elmer A. Clausius	Mike Putz
Fred E. Iob	

The undersigned Union will be glad to meet with your representatives at a time and place mutually convenient for purposes of arranging the details of restoring them to their jobs.

Very truly yours,

INTERNATIONAL UNION OF UNITED  
BREWERY, FLOUR, CEREAL AND SOFT  
DRINK WORKERS OF AMERICA

By EUGENE J. McCANN,  
Int'l Rep.

EJMC:EG [423]

[Endorsed]: Filed June 18, 1947. [424]

At a stated term, to wit: The February Term. A.D. 1947, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 3rd day of September in the year of our Lord one thousand nine hundred and forty-seven.

Present:

The Honorable: Paul J. McCormick, District Judge.

No. 6322-M Civil

FRED ELIA IOB, et al.,

vs.

L. A. BREWING CO., et al.

For setting; James C. R. McCall, Jr., Ass't U.S. Att'y, for plaintiff; James M. McRoberts, Esq., for defendants;

Court and counsel make statements. It is ordered that the injunction heretofore requested is denied and that upon the deposit by the L. A. Brewing Co., a respondent in the case, of an amount sufficient to liquidate and discharge any unpaid wage claim that may be hereafter determined, that further proceedings in this case will be suspended until Nov. 4, 1947.

Counsel are to stipulate as to the amount aforesaid and upon the filing of such stipulation, the

amount is to be deposited in the Registry of the Court.

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[Title of District Court and Cause.]

### STIPULATION

It Is Hereby Stipulated by and between the petitioners herein and respondent Los Angeles Brewing Company, a corporation, acting by and through their and its respective counsel, as follows, to wit:

(1) That the respondent Los Angeles Brewing Company has deposited in the registry of this Court, good and sufficient surety bond in the sum of Fifteen Thousand, Five Hundred Dollars (\$15,-500), and that the said principal amount of said bond is sufficient to liquidate and discharge any unpaid wage claim that may hereafter be determined in this proceeding, if any such determination be made against the respondent.

(2) That the deposit of said surety bond is not a recognition or admission by the respondent of any obligation to [425] the petitioners or any of them.

(3) That the deposit of said surety bond has been made in compliance with minute order entered in this proceeding on September 3, 1947, to which reference is hereby made.

Dated: September 15, 1947.



HANNA AND MORTON,

By /s/ JAMES M. McROBERTS,  
Attorneys for Respondent  
Los Angeles Brewing Co.

JAMES M. CARTER,  
United States Attorney,

RONALD WALKER,  
Assistant U. S. Attorney,  
Chief of Civil Division,

By /s/ JAMES C. R. McCALL, JR.,  
Assistant U. S. Attorney,  
Attorneys for Petitioners.

It is so ordered.

/s/ LEON R. YANKWICH,  
Judge.

[Endorsed]: Filed Sept. 15, 1947. [426]

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[Title of District Court and Cause.]

PETITIONERS' REQUESTS FOR ADMIS-  
SIONS UNDER F. R. C. P. RULE 36

Come the Petitioners pursuant to F.R.C.P., Rule 36(a), and request each of the respondents to admit the truth of the following facts, to wit:

1. That Schedules 1, 2, 3, and 4, photocopies of

which are attached hereto, and, delivered and exhibited herewith, were prepared by the Los Angeles Brewing Company in response to interrogatories propounded by petitioners to said company on May 29, 1947, and filed herein on that date.

2. That Schedule 1 is a true and correct statement and summary of the average number of hours of work performed by bottlers in the employ of the Los Angeles Brewing Company each week between October 6, 1946, and May 24, 1947.

3. That Schedule 2 is a true and correct statement of the individual average total wages paid each week by Los Angeles Brewing Company to bottlers for work performed by them in its employ between October 6, 1946, and May 24, 1947; and contains a correct statement of the wages which would have been paid by said company to Petitioner Dobbs and Ullrich, respectively, each week during said period if they had been then employed by the company as bottlers and had worked the average number of hours worked by all other bottlers employed by the company between said dates.

4. That Schedule 3 is a true and correct statement and summary of the average number of hours of work performed each week by brewers in the employ of Los Angeles Brewing Company between September 7, 1946, and November 6, 1946, and between November 25, 1946, and May 24, 1947.

5. That Schedule 4 is a true and correct statement of the individual average total wages paid

each week by Los Angeles Brewing Company to brewers for work performed by them in its employ between September 7, 1946, and November 6, 1946, and between November 25, 1946, and May 24, 1947; and contains a correct statement of the wages which would have been paid by said company to Petitioner Iob each week during said two periods, if he had been then employed by it as a brewer and had worked the average number of hours worked by all other brewers employed by the company during said periods.

6. That during the years 1946 and 1947, the respondent Los Angeles Brewing Company was a member of the California State Brewers Institute; and that said Institute acted as a collective bargaining representative for its members, including Los Angeles Brewing Company, in negotiating with the respondent Joint Local Executive Board of California and effecting with it certain working agreements dated July 28, 1946, and April 1, 1947, which agreements purported to regulate wages, hours and working conditions of persons employed in California breweries.

7. That under date of July 28, 1946, the respondent Joint Local Executive Board of California and the California State Brewers Institute, entered into two such collective bargaining agreements, one applicable to breweries located in Northern California, and the other applicable to breweries located in Southern California, and each purporting to

establish wages, hours and working conditions covering the employment of bottlers and brewers in such breweries; and that the second of these agreements, to wit, that applicable to breweries in Southern California, was signed by the respondent Los Angeles Brewing Company.

8. That later under date of April 1, 1947, the respondent [429] Joint Local Executive Board of California and the California State Brewers Institute, entered into another collective bargaining agreement, also signed by the Los Angeles Brewing Company, which purported to establish wages, hours and working conditions covering the employment of bottlers and brewers employed in breweries in Northern and Southern California, alike; and that this April 1, 1947, agreement supplanted and took the place of the two agreements dated July 28, 1946.

9. That said three agreements have been printed, and true printed copies thereof have been filed and exhibited in this case as follows:

(a) A true copy of the agreement dated July 28, 1946, applicable to Southern California breweries, is filed herein as Exhibit A to the Answer of respondent Los Angeles Brewing Company (June 18, 1947, and as Exhibit A to the Answer of respondent Joint Local Executive Board of California, et als (June 10, 1947), said two Answers being to the Petitioners' Amended Petition.

(b) A true copy of the agreement dated July 28, 1946, applicable to Northern California brew-

eries, is filed herein as Exhibit C-2 to the Affidavit of Wm. H. Ahern (verified June 9, 1947), filed by respondents other than Los Angeles Brewing Co., in opposition to the order to show cause.

(c) A true copy of the agreement dated April 1, 1946, applicable to both Northern and Southern California breweries, is on file herein as Exhibit B to the Answer of respondent Joint Local Executive Board of California et als and Exhibit B to the Answer of respondent Los Angeles Brewing Company, each being an Answer to Petitioners' Amended Petition; and also as Exhibit B to said affidavit of Wm. H. Ahern aforesaid.

10. That the reemployment of veterans of the armed forces of the United States is separately provided for in Section 4 of each of said three agreements.

11. That Exhibit A attached hereto, and delivered and exhibited herewith, contains and presents a true and correct copy of the frontpiece, preamble, [430] Sections 1(a), 1(b), 1(g), 2, 4(c) and 53, and the witnessing clause, of said agreement dated July 28, 1946, applicable to breweries in Northern California; and that said agreement was signed by the parties, unions and union officials whose names appear after the witnessing clause on said Exhibit A.

12. That by charter amendment filed June 8, 1948, the respondent Los Angeles Brewing Company changed its name to Main Street Corporation,

and the latter is the present correct name of said respondent.

Dated: This November 12, 1948.

JAMES M. CARTER,  
United States Attorney,

CLYDE C. DOWNING,  
Assistant U. S. Attorney,  
Chief, Civil Division,

/s/ JAMES C. R. McCALL, JR.,  
Assistant U. S. Attorney,  
Attorneys for Petitioners.



## SCHEDULE 1

## LOS ANGELES BREWING CO.

SUMMARY OF BOTTLE HOUSE PAYROLL  
WEEKLY HOURS WORKED FROM PERIOD  
BEGINNING OCTOBER 6, 1946, TO  
MAY 24, 1947, INC.

Period	Number of Employees	Total Hours Worked	Average Hours Worked Per Em- ployee
Week ending October 12, 1946.....	195	9,445½	48
" " October 19, 1946.....	193	9,267	48
" " October 26, 1946.....	195	9,385	48
" " November 2, 1946.....	196	9,671½	49
" " November 9, 1946.....	204	9,129½	45
" " November 16, 1946.....	199	9,617	48
" " November 23, 1946.....	197	9,680½	49
" " November 30, 1946.....	207	9,135½	44
" " December 6, 1946.....	197	9,628	49
" " December 14, 1946.....	202	9,975½	49
" " December 21, 1946.....	201	9,938	49
" " December 28, 1946.....	206	8,916½	43
" " January 4, 1947.....	202	9,283½	46
" " January 11, 1947.....	208	8,893	43
" " January 18, 1947.....	199	9,769	49
" " January 25, 1947.....	211	10,323	49
" " February 1, 1947.....	208	11,672½	56
" " February 8, 1947.....	215	10,775	50
" " February 15, 1947.....	213	10,899	51
" " February 22, 1947.....	208	10,487	50
" " March 1, 1947.....	207	10,404	50
" " March 8, 1947.....	207	11,593	56
" " March 15, 1947.....	208	11,300	54
" " March 22, 1947.....	203	10,985½	54
" " March 29, 1947.....	207	10,421½	50
" " April 5, 1947.....	205	9,939½	48
" " April 12, 1947.....	206	11,514	56
" " April 19, 1947.....	207	11,547½	56
" " April 26, 1947.....	206	11,537½	56
" " May 3, 1947.....	204	9,849	48
" " May 10, 1947.....	205	11,540	56
" " May 17, 1947.....	207	11,660	56
" " May 24, 1947.....	206	11,582½	56

## SCHEDULE 2

## LOS ANGELES BREWING CO.

COMPUTATION OF WAGES WHICH WOULD HAVE BEEN PAID TO DOBBS AND ULLRICH IF WORKED AS BOTTLERS

AVERAGE NUMBER OF HOURS PER PAY WEEK—

OCTOBER 6, 1946, TO MAY 24, 1947

Period		Av. Hours Worked By All Bottlers....	40 Hr. Wk. Rate...	Straight Time ....	Overtime at Time and ½.....	Total Wages .....
Week Ending	October 12, 1946.....	48	\$54.50	\$54.50	\$16.35	\$ 70.85
" "	October 19, 1946.....	48	54.50	54.50	16.35	70.85
" "	October 26, 1946.....	48	54.50	54.50	16.35	70.85
" "	November 2, 1946.....	49	54.50	54.50	18.39	72.89
" "	November 9, 1946.....	45	54.50	54.50	10.22	64.72
" "	November 16, 1946.....	48	54.50	54.50	16.35	70.85
" "	November 23, 1946.....	49	54.50	54.50	18.39	72.89
" "	November 30, 1946.....	44	54.50	54.50	8.17	62.67
" "	December 6, 1946.....	49	54.50	54.50	18.39	72.89
" "	December 14, 1946.....	49	54.50	54.50	18.39	72.89
" "	December 21, 1946.....	49	54.50	54.50	18.39	72.89
" "	December 28, 1946.....	43	54.50	54.50	6.13	60.63
Change in rate 8.00 per wk. ef- fective Dec. 30	{ December 29, 1946.....	8	54.50	10.90	.....	10.90
" "	{ January 4, 1947.....	38	62.50	50.00	14.06	64.06
" "	January 11, 1947.....	43	62.50	62.50	7.03	69.53
" "	January 18, 1947.....	49	62.50	62.50	21.09	83.59
" "	January 25, 1947.....	49	62.50	62.50	21.09	83.59
" "	February 1, 1947.....	56	62.50	62.50	37.50	100.00
" "	February 8, 1947.....	50	62.50	62.50	23.44	85.94
" "	February 15, 1947.....	51	62.50	62.50	25.78	88.28
" "	February 22, 1947.....	50	62.50	62.50	23.44	85.94
" "	March 1, 1947.....	50	62.50	62.50	23.44	85.94
" "	March 8, 1947.....	56	62.50	62.50	37.50	100.00
" "	March 15, 1947.....	54	62.50	62.50	32.81	95.31
" "	March 22, 1947.....	54	62.50	62.50	32.81	95.31
" "	March 29, 1947.....	50	62.50	62.50	23.44	85.94
" "	April 5, 1947.....	48	62.50	62.50	18.75	81.25
" "	April 12, 1947.....	56	62.50	62.50	37.50	100.00
" "	April 19, 1947.....	56	62.50	62.50	37.50	100.00
" "	April 26, 1947.....	56	62.50	62.50	37.50	100.00
" "	May 3, 1947.....	48	62.50	62.50	18.75	81.25
" "	May 10, 1947.....	56	62.50	62.50	37.50	100.00
" "	May 17, 1947.....	56	62.50	62.50	37.50	100.00
" "	May 24, 1947.....	56	62.50	62.50	37.50	100.00
Total .....						\$2,732.70

## SCHEDULE 3

## LOS ANGELES BREWING CO.

SUMMARY OF BREWERS PAYROLL WEEKLY  
HOURS WORKED FROM SEPTEMBER 17 TO  
NOVEMBER 6 AND NOVEMBER 25, 1946  
TO MAY 24, 1947

Period	Number of Employees	Total Hours Worked	Average Hours Worked Per Employee
Sept. 17, 18, 19, 20—4 Days.....	39	1,597	41
Week Ending September 28, 1946....	38	1,781½	47
"    "    October 5, 1946.....	38	1,767½	47
"    "    October 12, 1946.....	38	1,737½	46
"    "    October 19, 1946.....	36	1,746	48
"    "    October 26, 1946.....	36	1,768½	49
"    "    November 2, 1946.....	39	1,740	45
November 4, 6, 6—3 days.....	39	1,110	28
Week Ending November 30, 1946....	39	1,490½	38
"    "    December 6, 1946.....	39	1,756	45
"    "    December 14, 1946.....	38	1,894	50
"    "    December 21, 1946.....	38	1,769	47
"    "    December 28, 1946.....	37	1,276	34
"    "    January 4, 1947.....	37	1,432	39
"    "    January 11, 1947.....	39	1,939½	50
"    "    January 18, 1947.....	39	1,783	46
"    "    January 25, 1947.....	39	1,835	47
"    "    February 1, 1947.....	38	1,794	47
"    "    February 8, 1947.....	39	1,986	51
"    "    February 15, 1947.....	39	1,830	47
"    "    February 22, 1947.....	39	1,827	47
"    "    March 1, 1947.....	38	1,726½	45
"    "    March 8, 1947.....	39	1,811	46
"    "    March 15, 1947.....	40	1,981	50
"    "    March 22, 1947.....	39	1,962	50
"    "    March 29, 1947.....	38	1,882	50
"    "    April 5, 1947.....	38	1,921	51
"    "    April 12, 1947.....	38	1,956	51
"    "    April 19, 1947.....	37	1,987	54
"    "    April 26, 1947.....	37	1,929½	52
"    "    May 3, 1947.....	39	1,875	48
"    "    May 10, 1947.....	39	2,027	52
"    "    May 17, 1947.....	39	1,827	47
"    "    May 24, 1947.....	38	1,925	51

## SCHEDULE 4

## LOS ANGELES BREWING CO.

COMPUTATION OF WAGES WHICH WOULD HAVE BEEN  
PAID TO IOB IF WORKED AS BREWERS AVERAGE  
NUMBER OF HOURS PER PAY WEEK SEPTEMBER 17 TO  
NOVEMBER 6, 1946, AND NOVEMBER 25, 1946, TO  
MAY 24, 1947

Period	Av. Hours Worked By All Brewers.....	40 Hr. Wk. Rate...	Straight Time .....	Overtime at Time and 1/2.....	Total Wages.....
Sept. 17, 18, 19, 20—4 Days.....	41	\$59.00	\$59.00	\$ 2.21	\$ 61.21
Week Ending September 28, 1946....	47	59.00	59.00	15.49	74.49
" " October 5, 1946.....	47	59.00	59.00	15.49	74.49
" " October 12, 1946.....	46	59.00	59.00	13.28	72.28
" " October 19, 1946.....	48	59.00	59.00	17.70	76.70
" " October 26, 1946.....	49	59.00	59.00	19.91	78.91
" " November 2, 1946.....	45	59.00	59.00	11.06	70.06
November 4, 5, 6—3 days.....	28	59.00	41.30	.....	41.30
" " November 30, 1946.....	38	59.00	56.05	.....	56.05
" " December 6, 1946.....	45	59.00	59.00	11.06	70.06
" " December 14, 1946.....	50	59.00	59.00	22.13	81.13
" " December 21, 1946.....	47	59.00	59.00	15.49	74.49
" " December 28, 1946.....	34	59.00	50.15	.....	50.15
" " December 29, 1946.....	8	59.00	11.80	.....	11.80
" " January 4, 1947.....	31	67.00	51.93	.....	51.93
" " January 11, 1947.....	50	67.00	67.00	25.13	92.13
" " January 18, 1947.....	46	67.00	67.00	15.07	82.07
" " January 25, 1947.....	47	67.00	67.00	17.59	84.59
" " February 1, 1947.....	47	67.00	67.00	17.59	84.59
" " February 8, 1947.....	51	67.00	67.00	27.64	94.64
" " February 15, 1947.....	47	67.00	67.00	17.59	84.59
" " February 22, 1947.....	47	67.00	67.00	17.59	84.59
" " March 1, 1947.....	45	67.00	67.00	12.56	79.56
" " March 8, 1947.....	46	67.00	67.00	15.07	82.07
" " March 15, 1947.....	50	67.00	67.00	25.13	92.13
" " March 22, 1947.....	50	67.00	67.00	25.13	92.13
" " March 29, 1947.....	50	67.00	67.00	25.13	92.13
" " April 5, 1947.....	51	67.00	67.00	27.64	94.64
" " April 12, 1947.....	51	67.00	67.00	27.64	94.64
" " April 19, 1947.....	54	67.00	67.00	35.17	102.17
" " April 26, 1947.....	52	67.00	67.00	30.15	97.15
" " May 3, 1947.....	48	67.00	67.00	20.10	87.10
" " May 10, 1947.....	52	67.00	67.00	30.15	97.15
" " May 17, 1947.....	47	67.00	67.00	17.59	84.59
" " May 24, 1947.....	51	67.00	67.00	27.64	94.64
Total .....					\$2,742.35

## EXHIBIT "A"

## CONTRACT

Between Joint Local Executive Board of California, Comprising Bottlers Local Union No. 896, Brewers, Maltsters & Yeast Workers Local Union No. 893, Brewery Drivers & Helpers Local Union No. 888, Brewery Shipping, Receiving Clerks and Checkers Local Union No. 884, Affiliated with International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America, Effective July 28, 1946.

## Contract

Whereas, the Joint Local Executive Board of California, Locals Nos. 888, 893, 896, and 884 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, state and allege that as of the date hereof, said joint Local Executive Board of California is the designated and selected representatives of the employees in the brewing, bottling, delivery, shipping and receiving departments of all the breweries of Northern California, for the purposes of collective bargaining with respect to rates of pay, wages, hours of labor and other conditions of employment, which said specific statement and allegation constitutes the material consideration to the breweries herein:

Now, Therefore, after presentation of evidence of such representation and in consideration of the mutual promises herein contained: it is agreed:

Section 1. (a) Only members in good standing



who are members of Local Union No. 893 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be employed as brewers in the brewing department, including all basements, platforms, and wash houses used in connection with the operation of the brewing department.

(b) Only members in good standing who are members of the Bottlers Local Union No. 896 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be employed as bottlers in the bottling department at the brewery, including all basements, platforms, storage and yards used in connection with the operating of the bottling departments in positions where bottlers are now employed, or in those branches where employer may require the employment of a steady crew to perform bottlers' work. [436]

\* \* \*

(f) This contract shall cover only employees who perform their services principally within the State of California for the respective breweries.

(g) Provided, however, in those cases in which the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America permit mixed branches, i.e., branches in which members who normally would belong to Local Unions Nos. 893, 896, 888 and 884 but are members of a mixed branch of any of the said local unions, only members in good standing who are members of such mixed branch of any said local unions shall be employed in the capacities hereinabove set out, and



provided further that all unloading, and loading of railroad cars on or within two blocks of the brewery premises shall be done by members of one of the aforesaid unions or branches thereof.

Section 2. All employees shall be obtained and hired through the respective local unions, and branches thereof to which the employees in said department are required to belong, provided, however, that should said respective local unions be unable to provide the necessary satisfactory employees, then and in that event, said employees may be obtained from any source, provided further, however, that said employees so obtained through other sources shall secure a permit card from said respective local union within forty-eight (48) hours after commencing work and said union shall deliver such permit card to such employee.

The employer in those cases where he is required hereunder to employ only members of the respective unions hereinbefore mentioned, except local 896, shall, in all cases involving regular employees as distinguished from employees required for temporary employment, have the right of selection from the list of unemployed union members or card permit men, which list shall be maintained by and furnished by the Secretary of each such local union to the employer on request.

\* \* \*

Section 4. (c) Any employee, other than a temporary employee, leaving his position to enlist in or be inducted into the Armed Land and Naval

forces of the United States under the provisions of the "Selective Training [437] Service Act of 1940" shall, upon completion of their period of training under Section 3(b) of that Act or their period of enlistment, be restored to their former positions, according to seniority held at the time of induction or enlistment, provided that they are capable of performing the duties of such position and have reported for work within ninety (90) days following their discharge from such service. Upon the reinstatement of any such person to his position, employer shall be permitted to discharge such employee as such returned service man shall displace.

\* \* \*

Section 53. This contract shall be in full force and effect from the date hereof until March 1, 1947.

In Witness Whereof, the parties have hereunto set their hands and seals by their respective representatives, this 28th day of July, 1946.

This contract applies only to breweries in northern California.

For the Employers:

California State Brewers Institute for Institute  
Members in Northern California by James G.  
Hamilton, Secretary.

For the Employees:

Joint Local Executive Board of California, by  
Martin Christen, Secretary.

For Grace Bros. Brewery, Ltd., in Northern  
California, by James M. McRoberts.

Golden West Brewing Co.

Thomas G. Walker

Eldorado Brewing Co.

A. J. Rothenbrush, Pres.

Approved by:

Wm. H. Ahern

Sec'ty. Bottlers Local Union No. 896.

Henry Jenichen

Sec'ty. Brewers, Maltsters and Yeast Workers  
Local Union No. 893. [438]

Martin Christen

Sec'ty. Brewery Drivers and Helpers Local  
Union No. 888.

Clay Bissant

Sec'ty. Brewery Shipping, Receiving Clerks  
and Checkers Local Union No. 884. [439]

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[Title of District Court and Cause.]

### AFFIDAVIT OF SERVICE BY MAIL

United States of America,

Southern District of California—ss.

Grace E. McGimpsey, being first duly sworn, deposes and says:

That she is a citizen of the United States and a resident of Los Angeles County, California; that her business address is 600 Post Office and Court House, Los Angeles, California; that she is over

the age of eighteen years, and is not a party to the above-entitled action;

That on November 12, 1948, she deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Petitioners' Requests for Admissions Under F.R.C.P. Rule 36, addressed to: O'Melveny & Myers, Esqs., 433 So. Spring Street, Los Angeles 14, California, as attorneys for Los Angeles Brewing Company; and P. H. McCarthy, Jr., 518 Balboa Bldg., San Francisco 5, California, as Attorney for Joint Local Executive Board of California, Bottlers Local Union No. 896, and Brewers, Maltsters & Yeast Workers Union No. 893, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Walter Eckberg, Anthony Zeigler, Thomas Vacca and Elmer Schaffer, at their last known addresses, at which places there is a delivery service by the United States Mails from said Post Office.

/s/ GRACE E. McGIMPSEY. [440]

Subscribed and Sworn to before me this 12th day of November, 1948.

EDMUND L. SMITH,

Clerk, U. S. District Court,  
Southern District of Calif.,

By /s/ EDW. L. DREW,  
Deputy.

[Endorsed]: Filed Nov. 12, 1948. [441]

In the District Court of the United States in and  
for the Southern District of California, Central  
Division

No. 6322-M Civil

FRED ELIA IOB, et al.,

Petitioners,

vs.

LOS ANGELES BREWING COMPANY, INC.,  
et als.,

Respondents,

JOINT LOCAL EXECUTIVE BOARD OF CAL-  
IFORNIA, an unincorporated association,  
Additional Respondent.

REPLY TO PETITIONERS' REQUESTS FOR  
ADMISSIONS UNDER F.R.C.P. RULE 36

Comes Now Additional Respondent and replying  
to petitioners' requests for admissions, admits and  
denies as follows:

1. Replying to paragraphs 1, 2, 3, 4 and 5, Addi-  
tional Respondent states that it has not access to the  
original records and therefore cannot state whether  
the alleged facts set out on the schedules referred  
to in said paragraphs are true or false. However,  
Additional Respondent will not question the truth  
of said alleged facts if Petitioners and Respondents  
are in agreement concerning the said alleged facts,  
but admit the same. [442]



2. Replying to paragraph 6, Additional Respondent denies the allegation therein contained.

3. Replying to paragraph 7, Additional Respondent denies the allegations therein contained and do so for the reason that the phrase "two such collective bargaining agreements" can only refer to paragraph 6.

4. Replying to paragraph 8, Additional Respondent denies the allegations therein contained and does so for the reason that the phrase "another collective bargaining agreement" can only refer to paragraphs 6 and 7.

5. Replying to paragraph 9, Additional Respondent denies the allegations therein contained because the phrase "said three agreements" can only refer to paragraphs 6, 7 and 8. They, however, admit that the agreements referred to in sub-paragraphs (a), (b) and (c) of paragraph 9 are true copies of the agreements the purport to be but not the agreements referred to in paragraphs 6, 7 and 8 about which Additional Respondent knows nothing.

6. Answering paragraph 10, Additional Respondent states that the re-employment of veterans of the armed forces of the United States is not "separately provided for in Section 4" and allege the true fact to be that such re-employment is provided for in Section 4 (c) not separately but subject to the terms and provisions of the entire agreement.

7. Replying to paragraphs 11 and 12, Additional



Respondent admits the allegations in said paragraph contained.

Dated November 18, 1948.

/s/ P. H. McCARTHY, JR.,  
Attorney for Additional  
Respondent. [443]

State of California,  
City and County of San Francisco—ss.

P. H. McCarthy, Jr., being first duly sworn, deposes and says: That he is attorney for The Joint Local Executive Board of California, Additional Respondent in the above entitled action; that he has read the foregoing "Reply to Petitioners' Requests for Admissions Under F.R.C.P. Rule 36" and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information or belief and as to those matters he believes it to be true.

/s/ P. H. McCARTHY, JR.

Subscribed and sworn to before me this 19th day of November, 1948.

[Seal] CATHERINE E. KEITH,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission Expires December 16, 1950. [444]

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,

City and County of San Francisco—ss.

H. O'Neill, being sworn, says that she is a citizen of the United States, over 18 years of age, a resident of the City and County of San Francisco, State of California, and not a party to the within action.

This affiant's business address is 518 Balboa Building, 593 Market Street, San Francisco 5, California.

That affiant served a copy of the attached "Reply to Petitioners' Requests for Admissions Under F. R. C. P. Rule 36" by placing said copy in an envelope addressed to James C. R. McCall, [445] Esq., Assistant U. S. Attorney, 600 Federal Building, Los Angeles 12, California, and O'Melveny & Myers, Esqs., 433 So. Spring Street, Los Angeles 14, California, which envelope was then sealed and postage fully prepaid thereon, and thereafter was on November 19, 1948, deposited in the United States mail at San Francisco.

That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

/s/ H. O'NEILL.

Subscribed and sworn to before me this 19th day of November, 1948.

[Seal]                      CATHERINE E. KEITH,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My Commission Expires December 16, 1950.

[Endorsed]: Filed November 20, 1948. [446]

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In the District Court of the United States for the  
Southern District of California, Central Division

No. 6322-M Civil

FRED ELIA IOB, et al.,

Petitioners,

vs.

LOS ANGELES BREWING COMPANY, INC.,  
et al.,

Respondents.

REPLY TO PETITIONERS' REQUESTS FOR  
ADMISSIONS UNDER FEDERAL RULES  
OF CIVIL PROCEDURE, RULE 36

Respondent Los Angeles Brewing Co. (incorrectly named in the petition herein as Los Angeles Brewing Company, Inc., and now Main Street Corporation, a corporation), for its reply to petitioners' requests for admissions, admits and denies and alleges as follows:

1. Answering Paragraph 1, admits that Schedules 1, 2, 3 and 4, photocopies of which are attached to petitioners' requests for admissions, were prepared by Los Angeles Brewing Co. in response to interrogatories propounded by petitioners to said company on May 29, 1947, and filed herein subsequent to that date; denies that said schedules were prepared by or in behalf [446A] of Los Angeles Brewing Company or that interrogatories were propounded by petitioners to said Los Angeles Brewing Company.

2. Answering Paragraph 2, admits that Schedule 1 is a true and correct summary of the average number of hours of work performed by bottlers in the employ of Los Angeles Brewing Co. each week between October 6, 1946, and May 24, 1947; denies that Schedule 1 is a true or correct statement or summary of the average number of hours of work performed by bottlers in the employ of Los Angeles Brewing Company.

3. Answering Paragraph 3, admits that Schedule 2 is a true and correct statement of the individual average total wages paid each week by Los Angeles Brewing Co. to bottlers for work performed by them in its employ between October 6, 1946, and May 24, 1947; admits that Schedule 2 contains a correct estimate of the wages which would have been paid by Los Angeles Brewing Co. to petitioners Dobbs and Ulrich, respectively, each week during said period if they had been employed by Los Angeles Brewing Co. as bottlers and if they

had worked the average number of hours worked by the other bottlers employed by the Los Angeles Brewing Co. between said dates; denies that Schedule 2 is a true or correct statement of wages paid by Los Angeles Brewing Company or that bottlers were employed by said company between October 6, 1946, and May 24, 1947, and denies that said Schedule relates in any way to Los Angeles Brewing Company.

4. Answering Paragraph 4, admits that Schedule 3 is a true and correct summary of the average number of hours of work performed each week by brewers in the employ of Los Angeles [446B] Brewing Co. between September 7, 1946, and November 6, 1946, and between November 25, 1946, and May 24, 1947; denies that said Schedule 3 relates in any way to Los Angeles Brewing Company.

5. Answering Paragraph 5, admits that Schedule 4 is a true and correct statement of the individual average total wages paid each week by Los Angeles Brewing Co. to brewers for work performed by them in its employ between September 7, 1946, and November 6, 1946, and between November 25, 1946, and May 24, 1947, and that said schedule contains a correct statement of the wages which would have been paid by Los Angeles Brewing Co. to petitioner Iob each week during said two periods if he had been employed by it as a brewer and if he had worked the average number of hours worked by the other brewers employed by Los Angeles

Brewing Co. during said periods; denies that said schedule relates in any way to Los Angeles Brewing Company.

6. Answering Paragraph 6, denies that during the years 1946 or 1947 respondent Los Angeles Brewing Co. was a member of the California State Brewers Institute; denies that said Institute acted as a collective bargaining representative for Los Angeles Brewing Co. in negotiating with the respondent Joint Local Executive Board of California or effecting with it certain working agreements dated July 28, 1946, or April 1, 1947; denies that Los Angeles Brewing Company was during the years 1946 or 1947 a member of the California State Brewers Institute and denies that said institute acted as a collective bargaining representative for Los Angeles Brewing Company in negotiating with the respondent Joint Local Executive Board of California or affecting with it certain working agreements dated July 28, 1946, or April [446C] 1, 1947; alleges that Los Angeles Brewing Company is a California corporation, Articles of Incorporation of which were first filed on May 5, 1948.

7. Answering Paragraph 7, denies the allegations thereof, except admits that on or about July 28, 1946, Los Angeles Brewing Co. signed a collective bargaining agreement establishing wages, hours and working conditions covering the employment of bottlers, brewers, shipping drivers and helpers, and checkers and shipping clerks in the employ of Los Angeles Brewing Co. with the Joint Local



Executive Board of California, Locals Nos. 893, 896, 884 and 203 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and admits that the contract last above referred to was also signed by California State Brewers Institute for members of said Institute in Southern California.

8. Answering Paragraph 8, denies the allegations thereof, except admits that on or about April 1, 1947, respondent Joint Local Executive Board of California and Locals Nos. 203, 683, 884, 888, 893 and 896 and the California State Brewers Institute and Los Angeles Brewing Co. and numerous other breweries and distributors in the State of California entered into a collective bargaining agreement establishing wages, hours and working conditions covering the employment of brewers, bottlers, drivers and shipping clerks employed by the breweries and distributors and that said April 1, 1947, collective bargaining contract last above referred to supplanted and took the place of the agreement dated July 28, 1946, between Los Angeles Brewing Co. and Joint Local [446D] Executive Board of California and Locals 893, 896, 884 and 203.

9. Answering Paragraph 9, denies the allegations thereof, except admits that the collective bargaining contracts referred to in subparagraphs (a), (b), and (c) of said Paragraph 9 are true copies of the agreements which they purport to be.

10. Answering Paragraph 10, denies that the re-

employment of veterans of the armed forces of the United States is separately provided for in Section 4 of each or any of said three agreements; alleges the true fact to be that such reemployment is provided for in Section 4 of each of said agreements not separately but subject to all of the terms and provisions and conditions of the entire agreement, including the provisions of Sections 1 and 2 of said agreement.

11. Answering Paragraph 11, admits the allegations in said paragraph contained.

12. Answering Paragraph 12, admits that by charter amendment filed June 8, 1948, respondent Los Angeles Brewing Co. changed its name to Main Street Co.; alleges that Main Street Co. is not engaged in the brewing business and is not the employer of any brewers or bottlers; alleges that on or about June 2, 1948, Los Angeles Brewing Company purchased and acquired all of the assets of Los Angeles Brewing Co. [446E]

Dated: December 8, 1948.

O'MELVENY & MYERS,  
W. W. ALSUP,

By /s/ WILLIAM W. ALSUP,  
Attorneys for Respondent Los Angeles Brewing Co.

(Now Main Street Corporation and incorrectly named as Los Angeles Brewing Company, Inc.) [446F]

At a stated term, to wit: The September Term, A.D. 1948, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Thursday, the 23rd day of December, in the year of our Lord one thousand nine hundred and forty-eight.

Present:

The Honorable: Paul J. McCormick, District Judge.

No. 6322-M Civil

FRED ELIA IOB,

vs.

L. A. BREWING CO., et al.

For re-setting for trial or disposition; James C. R. McCall, Jr., Ass't U. S. Att'y, appearing as counsel for plaintiff; Wm. Alsup, Esq., appearing as counsel for L. A. Brewing Co.; Court makes a statement and reads Memorandum of Decision and rules in favor of respondent, and that respondent prepare findings and judgment.

[Endorsed]: Filed Dec. 8, 1948. [447]

United States District Court, Southern District of  
California, Central Division

No. 6322-M. Civil

FRED ELIA IOB, et al.,

Petitioners,

vs.

LOS ANGELES BREWING COMPANY, INC.,  
et al.,

Respondents,

JOINT LOCAL EXECUTIVE BOARD OF CAL-  
IFORNIA, an Unincorporated Association,  
Additional Respondent.

### MEMORANDUM OF DECISION

This action is predicated upon the Selective Training and Service Act of 1940 as amended (50 U.S.C.A. App., Section 301 et seq), and the Service Extension Act of 1941, (50 U.S.C.A. App., Section 351 et seq.).

This court after appropriate full hearings has heretofore entered an order under date of September 3, 1947, denying an injunction requiring the respondent Los Angeles Brewing Company, a corporation, to restore the petitioners to employment in the brewery of respondent company at Los Angeles, California, for reasons stated by the court from the bench in this cause on April 7, 1947, and contained in the reporter's transcript of proceedings filed herein May 9, 1947.

The sole issue remaining undecided is whether the discharge of the petitioners was "without cause" within [448] the meaning of subsection (c) of Section 308 of the Selective Training and Service Act of 1940 as amended, *supra*.

The two Acts will for brevity be characterized herein as the Veterans Protective Acts; Los Angeles Brewing Company, a corporation, will be referred to as the respondent company. The following factual situation is disclosed by the record before the court: Petitioner Fred Elia Iob was first employed by the respondent company in March of 1943, as a brewer. The respondent company first employed as bottlers petitioner Samuel M. Dobbs in July of 1937, and petitioner Waldemar F. Ullrich in February of 1937. Each petitioner entered the armed services during the recent war for varying periods, and thereby became eligible for employment protection under the veterans protective acts. Prior to military service petitioner Iob was a member of Brewers, Maltsters and Yeast Workers Local Union No. 7, and petitioners Dobbs and Ullrich were members of Bottlers Local Union No. 293; both unions being affiliated with the Brewery Workers International Union.

The Brewery Workers International Union prior to July 27, 1946, was for a long period affiliated with the American Federation of Labor, then it became an independent union for a time, and finally it affiliated with the Congress of Industrial Organizations. Until July 27, 1946, the respondent company

pursuant to union contract, required that all brewers and bottlers in its employ be members of the aforesaid International Brewery Workers Locals Nos. 7 and 293. Prior to that time a majority of the workers of the category specified saw fit to resign from Locals Nos. 7 and 293, respectively, and to organize and join unions denominated as "Brewers, Maltsters and Yeast Workers Local Union No. 893" and "Bottlers Union No. 896"; both affiliates of the International Brotherhood of Teamsters, Chauffeurs [449] and Warehousemen and Helpers of America (American Federation of Labor). Conformable to a duly negotiated union contract respondent company from the date of July 28, 1946 has required that all brewers and bottlers be members of the last named "Teamsters" locals Nos. 893 and 896, respectively. The two locals of the Brewery Workers International Union subsequent to July 28, 1946, charged the respondent company with an unfair labor practice, aided and abetted by the two aforesaid "Teamsters" locals, before the National Labor Relations Board. But as far as we are advised, no hearing or decision has come from that body. These two locals also sought to invoke the processes of the State courts of the State of California in a labor organization dispute by suing to compel respondent company (and other brewery concerns) to employ only workers in good standing with such two locals of the Brewery Workers International Union. In an action in the Superior Court of the State of California in and for the County of Los Angeles in



Cause Number 517,511, by an order dated August 15, 1946, the State court refused to take such action. A strike was thereafter called by the Brewery Workers International Union locals, and a picket line was placed in respondent company's plant in Los Angeles, California, from about September 23, 1946, to approximately March 27, 1947. Notwithstanding such strike, the "Teamsters" locals continued to work and have continued to operate respondent company's plant during all applicable times with which we are concerned in this proceeding.

After the completion of their military service the three petitioners returned and were re-employed by respondent company until discharged as follows: Iob: On September 9, 1946 (and after discharge on September 17, 1946), again on November 6, 1946; Dobbs: On January 2, 1946; and Ullrich [450] on April 29, 1946. None of the petitioners would join the appropriate "Teamsters" locals as required by the contract between the respondent company and the "Teamsters" locals on July 28, 1946.

There is no indication in the record before us that the "Teamsters" locals would not have accepted application for membership on the part of the three petitioners. To the contrary, the agent of the "Teamsters" locals solicited and importuned all petitioners to join and affiliate in such contracting labor organizations; in fact it is clear from the record that affiliation with the contracting "Teamsters" locals is just what was desired of the

three petitioners by both the respondent company and its contracting "Teamsters" locals.

After the solicitations and importunities by the agent of the "Teamsters" locals and upon refusals on the part of the three petitioners to affiliate with the contracting labor union organizations and upon demand by the representative of such contracting labor union organizations the respondent company under pressure by such labor union organizations discharged the petitioners, as above noted.

This action instituted by the United States Attorney on behalf of the three petitioners followed. Subsequent to the hearing on April 7, 1947, in which the court refused to grant a mandatory injunction directed to the respondent company, the United States Attorney by an amended complaint filed May 28, 1947, brought into the cause the two "Teamsters" locals and the Joint Local Executive Board of California, of the International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America (American Federation of Labor) as parties defendant. [451]

The purpose of the veterans protective acts was to give the discharged veteran as nearly as possible a restoration of the employment situation which he would have had if he had never entered the military service. As stated by the Supreme Court in *Fishgold v. Sullivan Drydock and Repair Corporation*, 328 U.S. 275, "Congress protected the veteran against loss of ground or demotion on his return. The provisions for restoration without loss of

seniority to his old position or to a position of like seniority mean no more." Furthermore, for the statutory year indicated in Section 308 (e) of the Act, the restored rights of the veteran "could not be altered adversely by the usual processes of collective bargaining or of the employer's administration of general business policy." *Trailmobile v. Whirls*, 331 U.S. 40, 58. This latter statement by the Supreme Court has been interpreted to mean (in the light of the Selective Training and Service Act of 1940 as amended, *supra*) that "\* \* \* the employee's absence in war service is bound by the non-discriminatory arrangements made between the bargaining unit and the employer during his absence." *Gauweiler v. Electric Stop Nut Corp.*, 162 F. 2d 448, 451, (C.C.A. 3, 1947). It is true that our Court of Appeals has taken a different point of view from that in the Third Circuit as to the rights of veterans in this particular phase in relation to the "non-discriminatory arrangements made between the bargaining unit and the employer" during the veteran's absence in military service. See *Aeronautical Industrial Dist. Lodge 727 v. Campbell*, 169 F. 2d 252, (C.C.A. 9, 1948). Both decisions, however, we think, are in harmony with the principle that the veteran is to be restored as nearly as possible to the same position he would have rightfully occupied if he had not been called [452] into military service.

It would seem that the failure of an employee to obey the lawful and reasonable instructions of his employer under Section 308-(e) of the Act might

constitute sufficient "cause" for discharge. It has been stated that "the cause intended by the statute does not have to be legal cause. It may be such cause as a fair-minded person may act upon, and where such action is not arbitrarily taken with a purpose or as an excuse to avoid the statute, it is cause within the meaning thereof." *Keserich v. Carnegie Illinois Steel Corp.*, 163 F. 2d 889, (C.C.A. 5). A recent appellate decision has held that a veteran who on his return refused to join the union which had a closed shop agreement with the veteran's employer, might be properly discharged by the employer, the veteran's action constituting sufficient cause under Section 308-(e) of the Act, *supra*. The court in the decision referred to had this further to say:

"If Chatillon had insisted upon retaining Kemp in employment it would have breached the terms of its contract with the union. Moreover, it would have run a substantial risk of disrupting its labor relations and it might reasonably have anticipated a strike at its plant." *Kemp v. John Chatillon & Sons, Inc.*, 169 F. 2d 203, 207, (C.C.A. 3, 1948).

The striking similarity of the situation of this case and the one in the proceedings at bar is obvious.

While some conflict can be found in the decisions of the federal courts of appeal in their interpretations of phases of the veterans protective acts, uniformity and harmony seem to exist between the authoritative rulings on the central proposition that

is adhered to, namely, that returning veterans cannot be denied restoration of the employment situation as nearly as possible which they would have had if they had never entered the military service.

Cases in which seniority among employees was the issue are immaterial and of no help in solving the problem before us in this action. Here there is no claim of denial of seniority rights or of insurance or other benefits.

As the court stated in *Fishgold v. Sullivan Corp.* supra: “\* \* \* a veteran on his return is entitled to his old “position” or its equivalent \* \* \* unless of course the private employer’s ‘circumstances have so changed as to make it impossible or unreasonable’ to restore him.”

It appears that petitioners’ right to continued employment under the veterans protective acts was not absolute. Discharge was justifiable for cause, and cause might be in the form of failure to comply with existing labor legislation. All three petitioners were wanted as workers by respondent company and could have remained employed by joining the “Teamsters” locals. They refused, apparently on principle. The right to retain employment entertaining such principle was not legislatively guaranteed at the time of petitioners’ decision. See 29 U.S.C.A., Section 141 et seq.

We conclude, under the record and in the light of decisional authority, that the petitioners’ refusal to join the contracting “Teamsters” union locals was adequate grounds for their discharge, and under



such situation the respondent company should not be required to pay wages to petitioners.

Dated December 23, 1948.

/s/ PAUL J. McCORMICK,  
U. S. District Judge.

[Endorsed]: Filed Dec. 23, 1948. [454]

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In the District Court of the United States for  
the Southern District of California, Central  
Division

No. 6322-M Civil

FRED ELIA IOB, et al.,

Petitioners,

vs.

LOS ANGELES BREWING COMPANY, INC.,  
a corporation, et al.,

Respondents.

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW

The above entitled cause came on regularly for trial before the Honorable Paul J. McCormick, Judge of the above entitled court, on April 1, 1947, plaintiffs and defendants being represented by their respective attorneys of record. Evidence, both oral and documentary was introduced and the cause argued and thereafter under date of September 3, 1947, this court entered an order denying the petitioners' request for a mandatory injunction requiring the respondent employer to reinstate the peti-



tioners to their former positions, which injunction was denied for reasons stated by the court from the bench in this cause on April 7, 1947, and contained in the reporter's transcript of proceedings filed in the proceedings of this cause on [455] May 9, 1947. The cause was continued from time to time thereafter for disposition of the issue whether the discharge of the petitioners was "without cause" within the meaning of subsection (c) of Section 308 of the Selective Training and Service Act of 1940 as amended (50 U.S.C.A. App., Section 301 et seq.). The parties by their respective attorneys have submitted additional pleadings and arguments to the court, and the court being fully advised in the premises and having fully considered the evidence submitted in this cause, and the arguments and briefs of counsel, now makes the following findings of fact and conclusions of law:

### FINDINGS OF FACT

1. The petition herein is filed under the provisions of Section 8-(e) of the Selective Training and Service Act of 1940 as amended (50 U.S.C.A. App., Section 308-(e)) and Section 7 of the Service Extension Act of 1941 (50 U.S.C.A. App., Section 357).

2. Los Angeles Brewing Co. (hereinafter referred to as the respondent company) employed petitioner Fred Elia Iob as a brewer in March of 1943, and petitioners Samuel M. Dobbs and Walde-mar F. Ullrich as bottlers in July of 1937 and February of 1937 respectively; petitioners left these positions, which were other than temporary posi-

tions of employment, on February 24, 1945, January 17, 1942 and May 9, 1942, respectively, in order to enter upon military service in the United States Army, which each did promptly thereafter. Each of petitioners satisfactorily completed his period of training and service and received a certificate thereof in the form of an honorable discharge from the [456] United States Army. Within 90 days after receiving his said honorable discharge each of the three petitioners returned and was reemployed in his former position by respondent company as follows: Iob: On September 9, 1946, and (after discharge on September 17, 1946) again on November 5, 1946; Dobbs: On January 2, 1946; and Ullrich: On April 29, 1946.

3. Prior to entry on military service petitioner Iob was a member of Brewers, Maltsters and Yeast Workers Local Union No. 7, and petitioners Dobbs and Ullrich were members of Bottlers Local Union No. 293, both of which unions were affiliated with the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America. Such union membership was required as a condition of employment at the respondent company at all times the petitioners were employed by respondent company up to about July 26, 1946. Until the year 1941 the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America was affiliated with the American Federation of Labor and from 1941 until sometime in the year 1946 and prior to July 26, 1946, it operated as an independent union; in 1946 and shortly prior to July 26, 1946,

said union affiliated with the Congress of Industrial Organizations.

4. Prior to July 26, 1946, a majority of the respondent company's workers employed as brewers and bottlers resigned from Locals Nos. 7 and 293, respectively, and organized and joined unions denominated as Brewers, Maltsters and Yeast Workers Local Union No. 893 and Bottlers Union No. 896 (hereinafter sometimes referred to as the "Teamsters" locals), both affiliates of the Joint Local Executive Board of California and of the International Brotherhood of Teamsters, Chauffeurs and Warehousemen [457] and Helpers of America (American Federation of Labor).

5. On July 28, 1946, the respondent company and other breweries negotiated a collective bargaining contract with the Joint Local Executive Board of California. The National Labor Relations Board has not determined that the making of such contract violated the National Labor Relations Act (29 U.S.C. Secs. 158 et seq.), but to the contrary has refused to issue a complaint on and has ordered the dismissal of charges filed by Locals 7 and 293 of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, affiliated with the Congress of Industrial Organizations.

6. On July 28, 1946, the respondent company (and the other breweries in Southern California) duly negotiated said collective bargaining agreement with the said Joint Local Executive Board of California, comprising amongst others, "Teamster" locals 893 and 896. A copy of said agreement is

attached to and filed as Exhibit "A" to the Answer of the respondent company. Said contract provides in part as follows:

"Section 1. (a) Only members in good standing who are members of Local Union No. 893 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be employed as brewers in the brewing department, including all basements, platforms and wash houses used in connection with the operating of the brewing department.

"(b) Only members in good standing who are members of Bottlers' Local Union No. 896 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America shall be employed as bottlers in the bottling department at the brewery, including all basements, platforms, storage, and yards used in connection with operation of the bottling [458] department in positions where bottlers are now employed, or in those branches where employer may require the employment of a steady crew to perform bottlers' work.

"\* \* \*

"Section 4.

"(b) In the case of any employee inducted into the land or naval forces of the United States of America for training and service under the Selective Training and Service Act of 1940, if such person shall have left his position, other than a temporary position, in order to perform such training and service, and shall have received the certificate prescribed by said Act, and if he is still qualified to



perform the duties of such position and makes application for employment within sixty (60) days after he is relieved from such training and service, the employer shall restore such person to such position or to a position of like seniority, status and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so. Any person restored to a position in accordance herewith shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces and when so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the [459] employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause one year after such restoration. Upon the re-instatement of any such person to his position, employer shall be permitted to discharge such employee as such returned service man shall displace."

Said contract remained in full force and effect until April 1, 1947, at which time a new contract was entered into by respondent company with said Joint Local Executive Board of California and the "Teamster" locals 893 and 896. A copy of said contract is attached to the answer of respondent company as Exhibit "B." Said contract provides in part as follows:

"Section 1. (a) Only members in good standing

who are members of local union 893 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, shall be employed as brewers in the brewing departments, including all basements, platforms, and wash houses used in connection with the operation of the brewing department.

“(b) Only members in good standing who are members of Bottlers local union 896 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America shall be employed as bottlers in the bottling department at the brewery, including all basements, platforms, storage and yards used in connection with the operating of the bottling departments in positions where bottlers are now employed, or in those branches where employer may require the employment [460] of a steady crew to perform bottlers work.

“\* \* \*

“Section 4.

“(d) Any employe, other than a temporary employe, leaving his position as an inductee of the Armed Land and Naval Forces of the United States under the provisions of the ‘Selective Training Service Act of 1940,’ shall, upon completion of their period of training under Section 3-(b) of that Act or that period of enlistment, be restored to their former positions, according to seniority held at the time of induction, provided that they are capable of performing the duties of such position and have reported for work within 90 days following their discharge from such service. Upon the reinstatement



ment of any such person to his position, employer shall be permitted to discharge such employe as such returned serviceman shall displace.”

7. Locals 7 and 293 of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America affiliated with the Congress of Industrial Organizations (hereinafter referred to as Brewery Workers International Union) sought to invoke the processes of the State courts of the State of California by suing to compel respondent company (and other breweries) to employ only members in good standing of local unions 7 and 293 of said Brewery Workers International Union in the brewery and bottling departments of said breweries. In a proceeding in the Superior Court of the State of California in and for the County of Los Angeles in Cause No. 517,511, by an [461] order dated August 15, 1946, the State Court refused to take such action. A strike was thereafter called by said Brewery Workers International Union and a picket line was placed in front of respondent company's plant in Los Angeles, California, from approximately September 23, 1946, to approximately March 27, 1947. Despite such strike the “Teamster” locals continued to work and operate respondent company's plant at all times material in this proceeding.

8. At all times material herein, petitioners Dobbs and Ullrich have been members of Local No. 293 of said Brewery Workers International Union, and petitioner Iob has been a member of Local No. 7 of

said Brewery Workers International Union. None of petitioners has at any time been a member of the "Teamsters" Locals Nos. 896 or 893 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

9. Petitioners Dobbs and Ullrich were discharged by respondent company on or about October 5, 1946. Petitioner Iob was discharged on or about September 17, 1946, and, after a brief period of reemployment, was again discharged on November 25, 1946. Said discharges occurred by reason of demands therefor made upon the respondent employer by said "Teamster" locals 896 and 893; said demands were made for the reason that petitioners Dobbs and Ullrich were not and neither of them was a member in good standing of Local Union No. 896 and petitioner Iob was not a member in good standing of Local Union No. 893, as required by the contract dated July 28, 1946, between respondent company and the Joint Local Executive Board of California. Each of petitioners was offered membership in and was solicited and importuned to join the appropriate "Teamsters" local and each [462] refused said offer and at all times material herein refused to join said Local Unions Nos. 896 or 893 as required by the said contract dated July 28, 1946.

10. Upon refusals on the part of the three petitioners to affiliate with the contracting labor union organizations and upon demand by the representative of the contracting labor union organizations the respondent company discharged the petitioners.

The respondent company was threatened with strikes and economic pressure if the demands to discharge the petitioners were not complied with.

11. None of petitioners is entitled to any benefits in the petition herein for the reason that none of petitioners was a member of the labor unions which had the contract with respondent company hereinabove referred to, and each of petitioners refused to join said unions despite knowledge that without such union membership they could not continue in their respective jobs with respondent company.

12. None of petitioners was discharged without cause. Petitioners were and each of them was discharged because of economic pressure and the enforced contractual mandate of the union with whom respondent company had said collective bargaining agreement. The respondent company would have violated its contract with the union if it had failed to discharge any employee who refused to join said union.

### CONCLUSIONS OF LAW

The Court concludes:

1. The discharge of petitioners, or any of them, by respondent company were not discharged without cause. [463]

2. The discharge of petitioners, or any of them, by respondent company were not unlawful.

3. Petitioners are not and none of them is entitled to any compensation from respondent com-

pany for loss of wages or otherwise as prayed in their petition.

4. Petitioners are not and none of them is entitled to be restored to their former positions and the prayer for mandatory injunction is accordingly denied.

5. Said findings having been made upon issues which are determinative of the cause, any further finding or findings upon issues other than those embraced in the foregoing findings would be immaterial and are not made for that reason.

6. The respondents are entitled to a judgment that petitioners take nothing by their action.

Let judgment be entered accordingly.

Dated December 31st, 1948.

/s/ PAUL J. McCORMICK,  
Judge.

Approved as to Form as provided in Rule 7 of Rules of Procedure for the District Court of the United States for the Southern District of California.

/s/ JAMES C. R. McCALL, JR.,  
Assistant U. S. Attorney,  
Attorney for Petitioners.

/s/ P. H. McCARTHY, JR.,  
Attorney for Additional  
Respondents.

[Endorsed]: Filed Dec. 31, 1948. [464]

In the District Court of the United States for  
the Southern District of California Central  
Division

No. 6322-M Civil

FRED ELIA IOB, et al.,

Petitioners,

vs.

LOS ANGELES BREWING COMPANY, INC.,  
a corporation, et al.,

Respondents.

### JUDGMENT

The court having made its findings of fact and conclusions of law and having duly signed and caused to be filed its Memorandum of Decision,

Now, Therefore, It Is Ordered, Adjudged and Decreed that petitioners take nothing by their action.

Dated December 31st, 1948.

/s/ PAUL J. M. McCORMICK,  
Judge.

Approved as to Form, as provided in Rule 7 of Rules of Procedure for the District Court of the United States for the Southern District of California.

/s/ JAMES C. R. McCALL, JR.,  
Assistant U. S. Attorney,  
Attorneys for Petitioners.

/s/ P. H. McCARTHY, JR.  
Attorneys for Additional  
Respondents.

Judgment entered Dec. 31, 1948.

Docketed Dec. 31, 1948.

[Endorsed]: Filed Dec. 31, 1948. [466]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that the Petitioners Fred Elia Iob, Samuel M. Dobbs, and Waldemar F. Ullrich do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment entered in this case on December 31, 1948, in Judgment Book 55, page 42, denying relief under and dismissing their amended petition against Respondents Los Angeles Brewing Co., Inc., Joint Local Executive Board of California, Bottlers Local Union No. 896, Brewers, Maltsters & Yeast Workers Local Union No. 893 of the International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America, Walter Eckberg, Anthony Zeigler, Thomas Vacca, and J. S. Allwine, and from all previous orders and decisions in this case adverse to such petitioners, including the interlocutory order denying injunctive relief, entered September 2, 1947, in Minute Book (Central Division) No. 60, page 312.

Dated this 28th day of January, 1949. [467]

JAMES M. CARTER,  
U. S. Attorney,



CLYDE C. DOWNING,  
Assistant U. S. Attorney,  
Chief, Civil Division.

JAMES C. R. McCALL,  
Assistant U. S. Attorney,

/s/ JAMES C. R. McCALL,  
Attorneys for Petitioners.

[Endorsed]: Filed Jan. 28, 1949. [468]

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[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR  
DOCKETING APPEAL

Upon application of the appellant-petitioners, Fred Elia Iob, Samuel M. Dobbs, and Waldemar F. Ullrich, under Rule 73-(g) F.R.C.P., it is ordered that the time for filing the record on appeal and docketing their appeal in the United States Court of appeals for the Ninth Circuit be extended to and including April 28, 1949. This 8th day of March, 1949.

/s/ PAUL J. McCORMICK,  
Judge of the U. S. District  
Court.

Presented by:

JAMES M. CARTER,  
U. S. Attorney,

CLYDE C. DOWNING and  
JAMES C. R. McCALL,  
Assistant U. S. Attorneys,

/s/ JAMES C. R. McCALL,  
Attorneys for Appellants.

[Endorsed]: Filed March 8, 1949. [469]

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[Title of District Court and Cause.]

#### DESIGNATION OF RECORD ON APPEAL

Comes the appellants, Fred Elia Iob, Samuel M. Dobbs and Walter Myer Ullrich and designate the entire record, proceedings and evidence as portions of the record on appeal, including but not limited to the following:

1. Clerk's Transcript of Record
2. Reporter's Transcript of Proceedings
3. All motions, affidavits and exhibits made or introduced in the case.
4. All the pleadings, findings, orders, opinions and judgment.

JAMES M. CARTER,  
U. S. Attorney,

CLYDE C. DOWNING and  
JAMES C. R. McCALL,  
Assistant U. S. Attorneys,

By /s/ JAMES C. R. McCALL,  
Attorneys for Petitioners.

## AFFIDAVIT OF SERVICE BY MAIL

State of California,  
County of Los Angeles—ss.

Helen Humes, being first duly sworn, deposes and says:

That (s)he is a citizen of the United States and a resident of Los Angeles County, California; that (her) business address is 600 Post Office and Court House, Los Angeles, California; that (s)he is over the age of eighteen years, and is not a party to the above-entitled action;

That on May 19, 1949 (s)he deposited in the United States Mails in the Post Office at 312 No. Spring Street, Los Angeles, California, in the above-entitled action, in an envelope bearing the requisite postage, a copy of Designation of Record on Appeal addressed to (1) P. H. McCarthy, Jr., Esq., Attorney at Law, 518 Balboa Bldg., San Francisco, Calif. and (2) O'Melveny & Myers, 433 South Spring Street, Los Angeles, Calif., Attention: William W. Alsup, his last known address, at which place there is a delivery service by United States Mails from said post office.

/s/ HELEN HUMES.

Subscribed and sworn to before me, this 19th day of May, 1949.

WM. P. WHITE,  
Notary Public in and for said County and State.  
[Endorsed]: Filed May 19, 1949. [471]

## CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 471, inclusive, contain the original petition for Enforcement of Veterans' Reemployment Rights; Answer of Respondent Los Angeles Brewing Co. to Petitioners' Petition; Notice of Motion and Motion of Petitioners for New Trial with Leave to Add Parties; Amended Petition for Enforcement of Veterans' Reemployment Rights; Order to Show Cause; Interrogatories to Los Angeles Brewing Company, Inc., under Rule 33, F.R.C.P.; Motion to Dismiss, Vacate and Set Aside Alias Summons, Amended Petition for Enforcement of Veterans' Employment Rights, Order to Show Cause and Affidavits and Memorandum of Points and Authorities in Support of Motion; Motion to Dismiss; Affidavit of James M. McRoberts; Affidavits in Opposition to Order to Show Cause; Affidavit of Wm. H. Ahern in Opposition to Order to Show Cause; Answer of Additional Respondents the Joint Local Executive Board of California, et al., to Amended Petition; Stipulation and Order re Deposit in Court; Petitioners' Revised Points and Authorities for Final Action; Petitioners' Revised Points and Authorities for Final Action (Supplement No. 1); Reply to Petitioners' Revised Points and Authorities for Final Action; Additional Respondent's Preliminary Reply to Petitioners' Revised Points and Authorities for Final Action and

Supplement No. 1; Reply to Petitioners' Requests for Admissions of Additional Respondent; Reply of Los Angeles Brewing Co. to Petitioners' Requests for Admissions; Memorandum of Decision; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal; Order Extending Time for Docketing Appeal and Designation of Record on Appeal and full, true and correct copies of Minute Orders Entered April 1 and 2, 1947, May 19, 1947, June 5 and 7, 1947, September 3, 1947 and December 23, 1948 which, together with original reporters' transcript of proceedings of April 1 and 2, 1947, June 5 and 7, 1947, September 3, 1947 and December 20 and 23, 1948 and original petitioners' exhibits 1, 2 and 3 and original respondents' exhibits A and B at the hearing of April 1 and 2, 1947 and original respondents' exhibits A to F, inclusive, at the hearing of June 5, 1947, transmitted herewith constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 27th day of May, A.D. 1949.

[Seal] By /s/ EDMUND L. SMITH,  
Clerk. [472]

In the District Court of the United States for  
the Southern District of California, Central  
Division

No. 6322-M Civil

FRED ELIA IOB, et al.,

Petitioners,

vs.

LOS ANGELES BREWING COMPANY, INC.,  
a corporation,

Respondent.

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Los Angeles, California

Tuesday, April 1, 1947, 10:00 a.m.

Honorable Paul J. McCormick, Judge, presiding

Appearances:

For the Petitioners:

James M. Carter, Esq.,

U. S. Attorney, by:

James C. R. McCall, Jr., Esq.,

Assistant U. S. Attorney.

For the Respondent:

Hanna & Morton, by:

James M. McRoberts, Esq.,

1126 Pacific Mutual Building,

Los Angeles, California.



The Court: Call the case.

The Clerk: No. 6322-M, Civil, Fred Elia Iob, and others, vs. Los Angeles Brewing Company, Inc.

Mr. McCall: The petitioners are ready.

Mr. McRoberts: Ready for the defendant.

For the court's convenience, I understand that name is pronounced Iob.

Mr. McCall: Iob, yes, sir.

Mr. McRoberts: I understand that is right.

The Court: Proceed, gentlemen. I have read the pleadings and the memoranda.

Mr. McCall: Your Honor is ready to proceed with the case?

The Court: If you want to make any preliminary statement, you may do so.

Mr. McCall: Your Honor please, I do not know that I have any preliminary statement to make other than that set forth in the trial memorandum which was filed. We have agreed on the evidence, the documentary evidence, that will be adduced, and I am ready to present it to the court at this time—unless you want to make a statement?

Mr. McRoberts: No. We have agreed to and we have stipulated on that.

I think, so far as the defendant is concerned, your Honor, I will have to occupy the unique position of being a witness in this case, so that to save the court's time I would reserve my opening statement, because it would be in the nature of testimony, and I will give it at that time as a part of the record.

The Court: You are not going to argue the effect of your own testimony?

Mr. McRoberts: Well, I am going to be cast in a unique character, your Honor.

The Court: We would not pay much attention to a man arguing his own case.

Mr. McRoberts: How that comes about is because I have represented the Los Angeles Brewing Company since 1932, and matters which are pertinent here are known to no one else, you might say, than myself, in that I handled the actual negotiations. I am the only one who can testify first hand as to those various things.

The Court: You might have had one of your associates here.

Mr. McRoberts: If your Honor would grant me a continuance——

The Court: I think you would be in a better position if that were so.

Mr. McRoberts: That is why I anticipated that and made that statement at the outset.

The Court: If you are going to act as a witness, you could not with much force argue the effect of your own testimony. Naturally, I don't know what it will be.

Mr. McRoberts: I think, if your Honor is concerned on that point, that there will not be much question about what I would testify to and there would be no interpretation other than is in the documents. That, in effect, is practically all in the documents.

The Court: That is what I am talking about. If

there are no inferences or conflicts or differences of views to be explored by the court, then what I have said about a man arguing the effect of his own evidence is not applicable.

Mr. McRoberts: No, I don't think there would be, because the facts that I would testify to have been through the courts for 10 years, and there could not be any inferences drawn from my own evidence that would ensue in argument.

The Court: What do you say about that?

Mr. McCall: I don't know what Mr. McRoberts has in mind to testify to, because I don't think he has any testimony to give that would be contrary to what I am about to state, your Honor please.

There was a petition filed before the National Labor Relations Board last fall, in the latter part of the year, in which there was a decision rendered by the National Labor Relations Board last December.

Mr. McRoberts: That was just rendered—oh, for the election. That is right.

Mr. McCall: And in this opinion and order by the National Labor Relations Board, the course of events leading up to the conflict between these unions, in which the veterans were discharged last year, have been summarized. In other words, the force of the conflict involving these three parties, the Brewery Workers Union, the Teamsters Union, and the employer, is here summarized, and if it is agreeable to Mr. McRoberts—

Mr. McRoberts: Yes.

Mr. McCall: —we will stipulate that the facts found by the National Labor Relations Board in this opinion are correct.

Mr. McRoberts—I have. My testimony is purely historical, your Honor, which is not in conflict with any document in the case, but unfortunately my testimony has to be given because it happens I am the only one familiar with it.

The Court: I will have to ask you to raise your voice. I am afraid the reporter can't hear what you are stating.

I have indicated the views of the court with respect to a man arguing the effect of his own evidence; that it does not have much force.

Mr. McRoberts: I have no intention of arguing the effect of my own evidence, because my evidence is historical in nature. It is already in there, but I am going a little further and bringing it down to date. The facts are stipulated to.

The Court: If they are stipulated to, why don't you proceed with the stipulation?

Mr. McCall: Why can't we stipulate that the facts found in this National Labor Relations Board order are the historical facts which comprise the background of this dispute?

Mr. McRoberts: As far as it goes, yes.

Mr. McCall: Now, if there is any further background, of course, I don't know about it, and you would then be in the position of an ordinary witness. But I am willing to stipulate to what is in that, but as to the facts—if there are any other

facts, I would not be willing to stipulate to them.

Mr. McRoberts: I would not ask you to stipulate, but I would have to trace the history back of the Board's findings, which do not go back beyond 1943, and the background of the defendant's case goes back before 1939.

Mr. McCall: This goes back away to 1936. It traces it back there.

Mr. McRoberts: I didn't think it did.

The Court: I gathered from the memoranda that one of the crucial points in the case would be whether an asserted agreement or understanding or convention not in writing in any manner affected a subsequent closed shop agreement, which was in writing.

Mr. McCall: Yes, your Honor, that is the effect of it.

Mr. McRoberts: No, these facts do not go back as far as I would want to go. They go back to 1936 and contain a statement that we agreed on working rules in 1939, and we have the working rules adopted in 1939, and that was all I was going to testify to.

Mr. McCall: Then would you not stipulate that is what is in the decision?

Mr. McRoberts: With the working rules themselves. I have the working rules here.

The Court: Now, is there a stipulation or is there not a stipulation?

Mr. McRoberts: I think there is a stipulation.



The Court: What is it?

Mr. McCall: There is a stipulation, your Honor please, that the document now presented to the court, which is an order and decision and direction of election by the National Labor Relations Board, in the matter of Acme Brewing Company, No. 1786-D, being Cases Nos. 21-R-3564 and succeeding numbers, 21-R-3565, -3566, -3567, -3568, -3569, -3570, and -3697, before the National Labor Relations Board, contains a correct summary and statement of the steps in the conflict and the labor dispute between the Southern California Brewers, including the respondent, Los Angeles Brewing Company, and the International Brewery Workers Union, and the International Teamsters Union.

Mr. McRoberts: No, there was no labor dispute, Mr. McCall. This was not a labor dispute until December of last year. The facts we will stipulate to are the historical background that is contained in the Board's findings, which are correct.

Mr. McCall: Well, you object to the use of the words "labor dispute." Can we make it——

Mr. McRoberts: There was no dispute. Let's stipulate the facts found by the Board are the historical facts for this case.

Mr. McCall: That is all right.

The Court: So understood, and the document may be filed and marked as an exhibit.

The Clerk: Plaintiff's Exhibit 1.

(The document referred to was marked Plaintiff's Exhibit No. 1, and was received in evidence.)



Mr. McRoberts: You are offering the whole document?

Mr. McCall: The whole document.

The Court: What is the number, Mr. Clerk?

The Clerk: Plaintiff's Exhibit 1.

Mr. McCall: It is further agreed, your Honor, that the working rules referred to in Exhibit 1 are contained in the document which I now offer in evidence as Exhibit 2.

Mr. McRoberts: That those were the working rules in effect from 1939 until the signing of the contract attached to my answer.

Mr. McCall: All right.

Mr. McRoberts: As Exhibit A to my answer, the defendant's answer.

The Court: Is that correct?

Mr. McCall: Yes, sir.

The Court: That is the understanding between you, is it?

Mr. McRoberts: That is correct except as to the rates of pay, which varied. But outside of the rates of pay, that is correct.

The Clerk: Plaintiff's Exhibit 2.

(The document referred to was marked Plaintiff's Exhibit No. 2, and was received in evidence.)

Mr. McCall: It is next stipulated, and agreed, your Honor, that the document now offered as Exhibit 3 is an agreement between certain local unions of the International Brotherhood of Teamsters and

the International Brotherhood itself, made on the 25th day of July, 1946.

Mr. McRoberts: Yes.

The Court: That is the so-called closed shop written agreement?

Mr. McCall: Not yet, your Honor. This is an agreement under which the correlative Teamsters Unions were created by charter from the Teamsters.

Mr. McRoberts: Is that last statement of counsel a part of the stipulation?

The Court: Read that statement, Mrs. Zellner.  
(The statement was read.)

The Court: Let me see if I understand what you mean. At the time of this so-called jurisdictional dispute between the unions, there was a severance of the make-up of the units in the different labor union organizations, and this instrument which has been described as Exhibit 3 purports to be the memorial of that situation. Is that what it is?

Mr. McRoberts: I could possibly describe it, counsel, if you would permit me to.

Mr. McCall: State it to the court.

Mr. McRoberts: If the Court please, the plaintiffs here were members of what was known as the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America. As found in Plaintiffs' Exhibit 1, the defendant, with other breweries throughout the United States, had had written contracts with this union, closed shop contracts, until 1936. This is in Plaintiff's Exhibit 1, as I say. From 1939 to 1946, by reason of a

jurisdictional dispute between the International Union of Brewery Workers and the Teamsters Union over drivers, the brewery operators in California refused to sign a contract, but recognized these working rules that are in evidence, which contain a closed shop provision.

In May of 1946, the International Union at its meeting in Cincinnati voted to affiliate with the Congress of Industrial Organizations. At that time the members in California refused to follow that dictum, and formed their own union, chartered by the Teamsters.

Mr. McCall: I object to that statement, your Honor.

Mr. McRoberts: That is in the statement of facts.

Mr. McCall: No. The fact is there were certain members of the International Brewery Workers Union in the State of California who seceded and secured charters for other unions, other local unions, from the Teamsters International Union, and this instrument, Exhibit 3, is the agreement whereby the Teamsters International Union issued charters to these seceding members of the International Brewery Workers Local Union.

Is that correct?

Mr. McRoberts: I think that is what I said, counsel, or meant to say.

Mr. McCall: You said the members in California did so and so. Certain members, or a portion of the members, withdrew and formed other unions.

Mr. McRoberts: Is there any question about the majority of the members forming these unions?

Mr. McCall: The majority? I am not arguing on the majority. Some seceded and quit the Brewery Workers Union and formed another union, and Exhibit 3 is the agreement under which the charters from the International Teamsters were issued to these members of the new local unions that were created at that time, in July of 1946.

The Court: These members constituted a unit to whom a charter was issued?

Mr. McCall: Yes, sir.

The Court: What is the point on the issuance of that charter, so far as the plaintiffs are concerned?

Mr. McCall: Your Honor please, they were separate, they were different labor unions. They were members of the Brewery Workers Union, to which they formerly belonged, and these men, as individuals, then went over and created themselves new unions on and after July 8, 1946, under another and different International Union. Then, on July 28, 1946, in their capacity as local unions of the Teamsters, they entered into the contract which is made Exhibit A to the defendant's answer in this case, which purports or claims to have created a closed shop agreement between the brewers and the new unions of the Teamsters, so formed.

The Court: Let me see if I understand you. We will describe them, for lack of a better term, as the local unions, the workers' union of the breweries

here, and this defendant company. When this dispute arose as to union control, the local unions, instead of confederating with the International which became a division or subordinate entity of the Congress of Industrial Organizations, the C.I.O., affiliated themselves with the other aggregated union organization, the American Federation of Labor. Is that it?

Mr. McCall: No, sir, they did not. The International Brewery Workers local unions still continued in existence, had officers and members, and went on a strike.

Mr. McRoberts: I object to that.

Mr. McCall: Well, that would be our position. At any rate, I will prove that, if there is any doubt about it.

The Court: Has the court stated what you will contend to be your position, Mr. McRoberts?

Mr. McRoberts: Yes, in substance, but so long as—yes, I think so, in substance. I will have to introduce some testimony now. I have some witnesses here.

The Court: All right. Then the point of difference between you now, that is apparent to the court, and it seems to be the only point of difference, is as to the result then that ensued when the local unions severed their connections with the International. Is that the only point of difference?

Mr. McCall: So far as the petitioners are concerned, there was never a severance.

The Court: The court will determine that. But I am asking you the question.



Mr. McRoberts: If your Honor please, if Mr. McCall is going into a question of jurisdiction, as he apparently is here, then I submit this court has no jurisdiction to determine that.

The Court: There is very serious doubt in the court's mind as to whether we could get into a labor question, even in these labor cases.

Mr. McRoberts: Judge James in a decision, as I recall, said——

The Court: Yes.

Mr. McRoberts: ——that we cannot go into jurisdiction. If counsel is going into that question, then I would have to make an appropriate motion.

The Court: Have you read that decision? That went to the Court of Appeals, as I remember.

Mr. McRoberts: Yes.

The Court: Do you have the citation.

Mr. McRoberts: It is in 106 Fed. (2d).

The Court: Was the District Court affirmed on that phase of it?

Mr. McRoberts: Yes, sir.

The Court: I didn't remember that. I remember the case.

Mr. McRoberts: It is 106 Fed. (2d) 876.

The Court: I don't believe we can try those labor disputes. I think the recent decision of the Supreme Court in the Lewis case is controlling on that.

Mr. McCall: I think the court has no jurisdiction to try whether there was an unfair labor practice, or anything of that sort, in this case, but I don't want the impression to be accepted as a fact that



the local unions of the International Brewery Workers did not continue under charters from that institution, and are not now in existence. Their membership is less, but they are in existence and functioning, and certain members, perhaps the majority, did form other unions subordinate to and under charters from the Teamsters Union. That is the fact, as I believe it.

Mr. McRoberts: That is pointing to jurisdiction. That is going to the question of jurisdiction.

Mr. McCall: Why should it go into jurisdiction? If it is a fact, then it is a fact. Isn't it a fact?

Mr. McRoberts: That what?

Mr. McCall: That that situation happened.

Mr. McRoberts: That the other unions continued?

Mr. McCall: Yes.

Mr. McRoberts: No. As a matter of fact, Mr. McCall, at the time you talk about, the Brewery Workers were an independent union, and they later affiliated with the C.I.O. But at the time you talk about, they were not affiliated with the C.I.O., they were not affiliated with the A.F. of L., but they were entirely independent, for your information.

The Court: You had better go on with your evidence. I want it clearly understood now that even in these veterans' cases I am not going to invalidate the Acts of Congress which preclude this court from trying any labor question.

Mr. McCall: That is right, and I have no intention to have your Honor to determine this to

be an unfair labor practice or a fair labor practice, but it is simply introduced in evidence to show there was in existence what was called and what was known as a labor dispute. Whether or not it was an unfair labor dispute is not in issue.

Mr. McRoberts: Then I object to it, your Honor. My understanding is the statement that the Joint Local Executive Board would only have a contract as the bona fide collective bargaining agency. That was my understanding, and it can't go into any question of jurisdiction.

The Court: How could we attempt, in view of the Norris-LaGuardia Act and the National Labor Relations Act and the Clayton Act, in a veterans case to invoke any equitable processes to reinstate a veteran, if there was a dispute concerning labor activities, and if that is the gist of the controversy concerning the veterans' rights to reinstate them, unless you have some authority to show that the federal courts have authority and that it has been held that in these veterans' cases, notwithstanding the very emphatic legislative pronouncements that have been adhered to by the [16] courts, particularly by the Supreme Court recently, and unless you can show we still have some right under the Selective Service and Training Act to inquire into those matters, we are not going to do it.

Mr. McCall: Yes, your Honor. This suit is predicated exclusively on the Selective Service and Training Act and the terms and conditions of employment which are required, and it is the position

of the veterans in this case that not only under the Selective Service and Training Act itself, but under the terms and conditions of their employment set forth in the contract, which was signed on July 28, 1946——

The Court: That is the exhibit attached to the answer?

Mr. McCall: Yes, sir, Exhibit A. (Continuing): ——that both under the law and under this contract, it is a part of the position held by these veterans that they should be restored and should not be discharged, and that is all.

The Court: You had better go ahead with your case.

The Clerk: Exhibit 3 in evidence.

(The document referred to was marked Plaintiffs' Exhibit No. 3, and was received in evidence.)

Mr. McCall: Mr. Iob, will you come forward, please?

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### FRED ELIA IOB

called as a witness by and on behalf of the petitioners, having been first duly sworn, was examined and testified as follows: [17]

#### Direct Examination

The Clerk: Your name is Fred Elia Iob?

The Witness: Yes, sir.

By Mr. McCall:

Q. Mr. Iob, what is your trade?

(Testimony of Fred Elia Iob.)

A. I am a brewer by trade, sir.

Q. How long have you followed that trade?

A. Since August, of 1936.

Q. Were you employed by the Los Angeles Brewing Company prior to your military service?

A. Yes, sir.

Q. When were you first employed by the Los Angeles Brewing Company?

A. On the 8th of March, 1943.

Q. Are you a member of the International Brewery Workers Union No. 7?      A. Yes, sir.

Q. Were you at that time, in 1943?

A. Yes, sir.

Q. Now, did you continue in that employment until you entered the armed services?

A. Yes, sir.

Q. When did you enter the Army?

A. I went into the Army on March 9, 1945.

Q. And were you honorably discharged therefrom? [18]      A. Yes, sir.

Q. On what day were you discharged?

A. July 20, 1946.

Q. Thereafter did you apply for re-employment by the Los Angeles Brewing Company?

A. Yes, sir.

Q. To whom, and when did you apply?

A. I applied for my job through a Mr. George Frank. He holds the position of assistant brewmaster at the Los Angeles Brewing Company.

Q. On what day was it?

(Testimony of Fred Elia Iob.)

A. On the 5th of September.

Q. On the 5th of September. Now, what conversation did you have with Mr. Frank? What did he tell you about coming back to work?

A. Well, he told me he would like to have me back, but that I would have to be cleared through the Teamsters Union; that I would have to see Mr. Schaffer.

Q. Mr. Schaffer of the Teamsters Local No. 893?

A. I believe so. I am not too familiar with their locals.

Q. Did you go to see Mr. Schaffer?

A. Yes, sir.

Q. On that day? A. Yes, sir. [19]

Q. What conversation did you have with Mr. Schaffer?

A. Well, he tried to persuade me to join the Teamsters Union, and I didn't accept his proposition. So, after a few exchanges of words, he said he would clear me in regard to my job, he would call the brewery, and I could go back to work, which I did do on the 9th of September.

Q. Do you know whether or not he called the brewery?

A. To the best of my knowledge, he probably did, because Mr. George Frank was aware—I mean he knew I would be back to work, that I had been cleared through Mr. Schaffer.

Q. Now, you then returned to work?

(Testimony of Fred Elia Iob.)

A. Yes, I did.

Q. For how long did you work?

A. I worked for eight consecutive days.

Q. Then what happened?

A. Then I was on the 15th of September to Mr. Jenichen. He is the representative, or used to be——

Mr. McRoberts: Just a minute. I object to hearsay testimony, your Honor. He can tell us what he did. He is referring now to a Mr. Jenichen.

Q. (By Mr. McCall): Did you have a talk with Mr. Jenichen? A. Yes, I did.

Mr. McRoberts: He doesn't work for the defendant.

Q. (By Mr. McCall): Does he work for the Los Angeles [20] Brewing Company?

A. No, he is—now, at the time I talked about, he was secretary of the Teamsters Union.

Q. All right. What happened with respect to your employment? Was it terminated on that day?

A. Yes, on the 17th of September.

Q. Well, never mind Mr. Jenichen then. Tell me what happened on the 17th of September.

A. On the 17th of September Mr. George Frank came to me and said he was sorry, but that he would have to let me go, due to the insistence of the Teamsters Union.

Q. And you didn't return to work any more?

A. That's right.

Q. Now, that was on the 17th of September, was it? A. Yes, sir.



(Testimony of Fred Elia Iob.)

Q. Did you see the Selective Service representatives about the matter at that time?

A. Yes, I did. I went to see Mr. Koenig.

Q. Who is Mr. Koenig?

A. He is the head of the Selective Service, in the Southern California branch here.

Mr. McRoberts: I object to any testimony, if your Honor please, as to any conversations with any representative of the Selective Service.

Mr. McCall: I have not asked for that. [21]

Mr. McRoberts: The facts are clear that this man was discharged. The company admits that. This is hearsay and irrelevant.

Mr. McCall: I am not asking for that conversation.

Mr. McRoberts: He brought in Mr. Koenig already, and I want to put my objection in before we go too far afield.

Mr. McCall: I have not asked for any conversation.

The Court: Let's get along.

Q. (By Mr. McCall): Did you thereafter go to work for the Los Angeles Brewing Company?

A. I was re-employed for the second time on the 6th of November.

Q. On the 6th of November? A. Yes, sir.

The Court: The question was if you went back to work.

The Witness: Yes, I did, sir.

The Court: On November 6th?

(Testimony of Fred Elia Iob.)

The Witness: Yes, sir.

Q. (By Mr. McCall): Whom did you see at the Los Angeles Brewing Company about returning to work? A. Mr. George Frank, again.

Q. Did you see him before you returned to work, before you were rehired?

A. Yes, I saw him two days previous to that, or a day previous to that. [22]

Q. What conversation did you have with him?

A. Well, it is pretty hard to explain, because there were so many people attending that conference that I had, along with Mr. George Frank, and the president of the Brewers, and the brewmaster, and two or three others that were in the office at the time.

Q. Was Mr. Koenig there?

A. No, he wasn't.

Q. Well, was any agreement reached at that time that you would return to work?

A. Yes, there was.

Q. Who was it reached with? What was said that showed you would go back to work?

A. Well, they agreed to hire me back again and they wouldn't discriminate against me, and I agreed to those terms, and I went back to work on the 6th of November.

Q. Had you in the meantime become a member of Local No. 893 of the Teamsters?

A. No, sir.

Q. How long did you work then?

(Testimony of Fred Elia Iob.)

A. Well, I worked until the 25th of November.

Q. What occurred at that time?

A. Well, I was offered a card to affiliate with the Teamsters Union, and I refused, and was discharged on the 25th of November. [23]

Q. Who discharged you, or who told you?

A. Mr. George Frank.

Q. Mr. Frank. What have you done since you were discharged the second time?

A. You mean in regard to my work?

Q. Yes, any earnings that you have made, or anything you have done.

A. I haven't worked for earnings since I have been discharged.

Q. Have you had any income at all from earnings or from work?

A. Well, I was receiving the Veterans Adjustment Compensation of \$20.00 a week, plus the strike benefit that we were receiving.

Q. Did you during this time maintain your membership in the International Brewery Workers Union, Local No. 7?      A. Yes, sir.

Q. And you are still a member of it?

A. Yes, sir.

Q. And pay dues to it?      A. Yes, sir.

Q. You have got a book from it?

A. Yes, sir.

Mr. McCall: That is all. [24]

(Testimony of Fred Elia Iob.)

Cross-Examination

By Mr. McRoberts:

Q. In what capacity were you employed originally at the brewery, Mr. Iob?

A. I was employed as a cooler man at the Los Angeles Brewing Company.

Q. That was in the brewing department, was it not?      A. Yes.

Q. You are a brewer by trade?      A. Yes, sir.

Q. And you were employed at the trade during the time you were employed at the defendant brewery; is that correct?      A. Yes, sir.

Q. Now, when you first went to work in 1943, did you clear through a union?      A. Yes, I did.

Q. What union did you clear through?

A. The International Brewers Union, Branch No. 4 of Local 7.

Q. Why did you clear through that union?

A. It was the customary thing to do.

Q. There was a closed shop arrangement over there, was there not?

Mr. McCall: I object. If there was a closed shop or not is a matter of law. [25]

Mr. McRoberts: He knows.

Mr. McCall: He was required to clear, and did clear.

The Court: Gentlemen, I do not want you to argue back and forth in this courtroom. I do not permit that. Make your objections and submit them, and I do not want to hear any argument at all. The objection is overruled.

(Testimony of Fred Elia Iob.)

Read the question, please.

(The question was read.)

The Witness: Yes, there was.

Q. (By Mr. McRoberts): And only fellow-members of your local brewery were employed in the brewing department?

A. Would you repeat that?

The Court: Read the question, please.

(The question was read.)

Q. (By Mr. McRoberts): Of your local union, I meant to say, were employed in the brewing department?

A. Well, not just fellow-members. They had a lot of permit card men there, too.

Q. Well, they were affiliated in some way with your organization, were they not, Mr. Iob?

A. Yes.

Q. When you returned from the service, that condition continued to exist; is that correct?

A. Well, on the—you are speaking of another union now, or—— [26]

Q. I am speaking of when you returned. When did you return from your service with the Army?

A. I was discharged on the 20th of July, and applied for my job on the 5th of September.

Q. When you went to work on the 5th of September, was there a closed shop effective—a closed shop arrangement effective in the brewing department? A. Oh, they claimed that, yes.

Q. Well, was there?

(Testimony of Fred Elia Iob.)

A. I have no way of proving it. I didn't see any contracts to that effect.

Q. Well, of what union were your fellow-employees members? Do you know?

A. Well, my fellow-employees were out on strike, and the others, I didn't belong to them. I didn't call them fellow-employees.

Q. Well, there were some employees in the brewing department, were there not, Mr. Iob?

A. Yes.

Q. Do you know of what union they were members or with what union they were affiliated?

A. I was told they were affiliated with the Teamsters Union.

Q. All of them?

A. The ones I talked to, yes. [27]

Q. Now, since the termination of your employment in November, have you attempted to procure employment of any kind?      A. Yes, I have.

Q. Are you physically able to perform work?

A. Yes, I am.

Q. Why didn't you procure any employment?

A. Because there wasn't any available.

Q. Did you try with the U.S.E.S.?

A. Yes, I did.

Q. In what capacity did you attempt to procure employment?

A. Well, it had me classed as laborer; as a laborer.

Q. Were you offered a job as a laborer?



(Testimony of Fred Elia Iob.)

A. No, sir.

Q. Were any available for that?

A. None at the time.

Q. At any time from November to this date there have been no jobs available?

A. Well, I reported there regularly once a month. That is the customary rule that they have there, and I was never offered a job.

Q. At no time?           A. At no time.

Q. In any capacity? [28]

A. In any capacity.

Q. By the U. S. Employment Service?

A. Well, they offered—I will take that back. Wait a minute. I will take that back. They wanted to send me back into the breweries, and after I explained the situation, it wasn't posted; I mean it wasn't insisted upon.

Q. Well, did they offer you jobs in the breweries, then?

A. Well, I couldn't very well take them after I had been discharged down there.

Q. But you were offered jobs in the breweries?

A. Once, yes.

Q. Were you offered any other jobs?

A. No, sir.

Q. Did you ask for any other jobs?

A. Ask for any other jobs? Yes.

Q. How have you supported yourself in the last six months, Mr. Iob?

A. Well, I think that is a personal matter, I believe, sir.

(Testimony of Fred Elia Iob.)

Q. I didn't hear the answer.

A. I say, I believe that is a personal matter, as to how I have supported myself.

Mr. McRoberts: Well, I ask for an answer to the question, your Honor. It is a question of mitigation.

The Court: Yes. You will have to answer. [29]

The Witness: Well, I received compensation from the Veterans Readjustment Administration at the rate of \$20.00 a week, which I am still drawing.

Q. (By Mr. McRoberts): Did you receive any strike benefits from Local 7? A. Yes, sir.

Q. How much did that amount to?

A. \$15.00.

Q. A week? A. Yes, sir.

Q. Are you employed at the present time?

A. No, sir.

Mr. McRoberts: I think that is all, your Honor.

### Redirect Examination

By Mr. McCall:

Q. I will ask you whether or not you were required to go down to see Mr. Schaffer at the Teamsters Local 893 before you returned to work on November the 6th? A. No, sir.

Q. He was not present at that meeting where it was agreed you would go back to work?

A. Yes, he was. He was present.

Q. He was present? A. Yes, sir.

Q. Were representatives of the brewery there at that [30] time also, at this meeting?

(Testimony of Fred Elia Iob.)

A. You mean from the International Brewers?

Q. No, the Los Angeles Brewing Company.

A. Yes, Mr. Schaffer and a Mr. L. Hicke, who was acting shop steward at the time.

Q. I mean, was there any official of the Los Angeles Brewing Company at this meeting?

A. Mr. Lick was there. He is the general manager.

Q. Mr. Lick. He is the general manager of the whole company?      A. Yes.

Q. Now, was anything said at that meeting about whether or not you, as a returned veteran, were entitled to work on your job notwithstanding the fact that you were not a member of the Teamsters Union?

Mr. McRoberts: I object to that, your Honor, as incompetent, irrelevant, and immaterial. The witness has testified he was re-employed.

The Court: Overruled.

The Witness: Would you repeat that?

The Court: Read the question, please.

(The question was read.)

The Witness: Well, there wasn't anything said about belonging to the union at the time. It was a question of whether I was capable of doing my work. [31]

Q. (By Mr. McCall): It had nothing to do, then, with your union membership?

A. That's right.

Mr. McCall: That is all.

(Testimony of Fred Elia Iob.)

Mr. McRoberts: No further questions.

The Court: This meeting was held on the second occasion when you went back, just before you went back to work?

A. Yes, sir.

Q. When you went back there the first time, was there anything said about union membership at all?

A. Well, Mr. George Frank brought up the question, that I would have to be cleared through the Teamsters Union before they could rehire me.

Q. Later on you went to work?

A. Yes, on the 9th of September I went back to work.

Q. How long after Mr. Schaffer told you—was that his name, Schaffer?      A. Yes.

Q. How long after he told you that you would have to be cleared through the Teamsters Union was it?

A. I saw Mr. Schaffer on the 5th, and I went back to work on the 9th.

Mr. McCall: Your Honor, Mr. Frank is the man at the brewery, and Mr. Schaffer is the business agent at the union. [32]

The Court: You stayed there until what time in September?

A. Until the 17th of September.

Q. How did you happen to quit on that day?

A. I didn't quit, your Honor. I was discharged.

Q. What happened?

A. Well, then they brought up the question that

(Testimony of Fred Elia Iob.)

I wasn't affiliated with the Teamsters Union; that they had cause to discharge me.

Q. When you went back in the first instance, did you say you were going to join the Teamsters Union? A. No, sir.

Q. You cleared with the Teamsters Union?

A. Well, the only thing I can figure out is that they tried to make an effort to have me affiliate with the Teamsters Union, and after this talk with Mr. Schaffer and I refused to join, then he cleared me anyway. He cleared me through the company anyway, because I wouldn't affiliate with them under any conditions.

Q. The men with whom you had affiliated were out on strike, I believe you said, at that time?

A. Yes, sir.

Q. Did you go through the line to work?

A. Well, the first time I came on was until the 17th, and there wasn't a picket line formed there until the 23rd of [33] September.

Q. There was no picket line there between the 9th and the 17th?

A. The first time the picket line was in evidence was on the 23rd of September.

Q. The first time it was in evidence—you mean that was the first time you saw it?

A. That was the first time it existed, your Honor.

Q. There was no picket line there when you went to work in the first instance after coming out of the service? A. That's right.

(Testimony of Fred Elia Iob.)

Q. But you knew that your associates in your union were out on strike?

A. At other breweries, yes, sir.

Q. Weren't they out on strike?

A. What I mean to say is, they were picketing at other breweries at that time.

Q. Weren't they on strike?

A. They were, but they hadn't formed a picket line there up until the 23rd of September.

Q. Were any of the other members of the union working there with you at that time?

A. Yes, your Honor.

Q. You testified as to this meeting when these different persons were present, when you went to work the second [34] time, and I believe you used the term that they agreed to put you to work without discrimination. What did you mean by that?

A. Well, this Mr. Schaffer was there, and he took the floor and promised they would treat me as fair as any other member of their union, that they wouldn't discriminate against me in any way.

Q. You say "they." What do you mean by "they"?

A. I used the word "they" because he used the same word; the membership that was working at the brewery at the same time.

Q. You are referring to the workers instead of the brewery manager?

A. This Mr. Lick, the general manager, also agreed to that effect, that they would treat me fair



(Testimony of Fred Elia Iob.)

and not just find any old excuse to discharge me again; that as long as I was able to do my work there wouldn't be any question as to my rights to work there.

Mr. McCall: If your Honor please, may I ask a question there?

The Court: Yes.

Mr. McCall: The Mr. Schaffer you are talking about is the business agent of the Teamsters Local 893 of the Brewers Union with whom you cleared for the job?

The Witness: Yes, sir. [35]

Mr. McCall: He was there, and he is the one that said you would not be discriminated against?

The Witness: Yes, sir.

The Court: You also said the man that represented the brewery company was present?

A. Mr. Lick, yes.

Q. And he also said you would not be discriminated against? A. That's right.

Q. That is the one you testified said you would not be discriminated against?

A. Well, before this meeting was over they all more or less agreed, that is, they all agreed I would be treated in a fair manner; that is, they wouldn't hold anything against me so long as I didn't belong to the Teamsters Union.

Q. Then, later on, your final separation from the work came when someone told you you would have to join this Teamsters Union, or else; is that it? A. That's right, your Honor.

(Testimony of Fred Elia Iob.)

Q. And you didn't want to join the union and left the work there; is that it?

A. I didn't leave the work. I was discharged again.

Q. How did that happen?

A. On a Monday—on that Monday in the morning the shop steward offered me a card to sign so that I could [36] affiliate with the Teamsters Union, and I refused to sign that card, and in the afternoon I was discharged. I was fired again.

Q. How did the discharge come up? What happened?

A. By Mr. George Frank. He seemed to have that capacity of hiring and firing. He fired me for the second time.

Q. What did he say?

A. He said he regretted to see me go, that my work was very satisfactory, and that the Teamsters insisted that I be discharged.

The Court: That is all.

Mr. McCall: That is all, your Honor.

(Witness excused.)

Mr. McCall: May it please your Honor: It is stipulated and agreed that the petitioner Iob was discharged by the Los Angeles Brewing Company on September 17th, pursuant to the following letter received from the Brewers, Maltsters and Yeast Workers of California Local No. 893, signed by Elmer Schaffer, secretary, dated September 16th, and addressed to the attention of Mr. Charles Lick:

“Gentlemen:

“This is to notify you that Messrs. Fred Iob and Bruno Reichelt, presently employed in your Brewing Dept., are not in good standing of Brewers Local Union No. 893, affiliated with the International Brotherhood of [37] Teamsters.

“Under the terms of the agreement signed by your firm with the Joint Local Executive Board of California, of which the above-mentioned union is a component part, only members in good standing of said Local Union may perform the work in the Brewing Department, as set forth in Section I-A of said agreement.

“We therefor request that you immediately comply with the provisions of said agreement by the discharge of these two above-mentioned persons employed in said departments of your firm.

“Very truly yours,

“Brewers, Maltsters and Yeast Workers Local Union 893.

“Elmer Schaffer, Secretary.”

You don't want that introduced, do you?

Mr. McRoberts: No. You have read it in evidence.

Mr. McCall: It is also agreed, your Honor, that his discharge on November 26, 1946, was made on the basis of the following letter, dated November 25, 1946, written by Elmer Schaffer, secretary of Local

Union 893 branch of the Brewers, Maltsters and Yeast Workers of California, Local Union No. 893, addressed to the Los Angeles Brewing Company, attention of Mr. Charles Lick:

“Gentlemen: [38]

“We request the immediate discharge of Fred Iob. He has no permit from Local Union 893 to work, nor is he a member of Local Union 893. Therefore, we ask his immediate discharge.

“Yours truly,

“Elmer Schaffer,

“Secretary, Local Union 893, Br. 4.”

I will call Mr. Ullrich.

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WALTER F. ULLRICH,

called as a witness by and on behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name, please?

The Witness: Walter F. Ullrich, U-l-l-r-i-c-h.

The Clerk: Walter F. Ullrich?

The Witness: Yes, U-l-l-r-i-c-h.

By Mr. McCall:

Q. Mr. Ullrich, what is your trade or occupation?  
A. Brewery bottler.

Q. How long have you followed that work?

A. Ever since 1934.

(Testimony of Walter F. Ullrich.)

Q. When were you first employed by the Los Angeles Brewing Company?

A. In February, 1937. [39]

Q. Did you continue in their employ as a bottler from 1937—was it January?

A. February.

Q. —from February, 1937, until you entered the Army? A. Yes, sir.

Q. When did you enter the Army?

A. May 9th, in '42.

Q. How long did you remain in the Army?

A. Until February 8th, in 1946.

Q. Were you honorably discharged?

A. Yes, sir.

Q. Did you then apply for re-employment at the brewery? A. Yes, sir.

Q. When did you apply?

A. April 29, 1946.

Q. April 29th. Were you employed immediately?

A. Yes. Well, in April, on the 29th—

Q. You returned to work?

A. Well, I had to apply first. Then I returned—yes, that was April 29th. That was on Monday. That's right.

Q. Then you went back to work. Now, let me ask you, does the brewery maintain a seniority list of its bottlers?

A. Yes, sir. They did at the time.

Mr. McRoberts: I object to that as incompetent, irrevelant, and immaterial, your Honor. [40]



(Testimony of Walter F. Ullrich.)

The Court: I didn't gather from the pleadings that it is a question of seniority.

Mr. McCall: Well, we ask that he be returned without loss of seniority.

The Court: You didn't allege that specifically. It is only as to the demand of the serviceman for re-employment under the Act?

Mr. McCall: Yes.

The Court: You didn't say anything about the loss of seniority. Are you making a claim that this witness lost his seniority?

Mr. McCall: Oh, yes, sir. He was discharged.

The Court: Other than the discharge, I am talking about. Apparently you and I do not understand the term the same way. "Seniority" and "work" are two different things.

Mr. McCall: Yes, sir.

The Court: One is employment, and the other is status at work.

Are you claiming here not only that he was wrongfully discharged and that he was not properly reinstated, but, also, that he was not given the status to which he was entitled?

Mr. McCall: No, sir, I do not contend that on his re-employment he was not, no, sir.

The Court: All right.

Mr. McCall: But I wanted to call the court's attention [41] to the seniority list maintained at the brewery and his place on it.

The Court: The schedule of wages is set up.



(Testimony of Walter F. Ullrich.)

I think you have both agreed on the wage that these three petitioners were entitled to, under the agreements with the brewery. There does not seem to be any difference there, so far as the computation is concerned.

Mr. McCall: No, sir. Your Honor please, what I am referring to is a list of employees in given classifications, according to their hiring date, their seniority date, and which is maintained in the union shops, is open to inspection, and an employee is put on that list and then removed when he is discharged, and he loses his seniority. I want to show by him that such a list is maintained and was maintained there, and that he was on that list as of his original hiring date. That regulates, your Honor, the laying off and other rights.

The Court: Suppose he was not on the list and worked for the brewery and came back and wanted his job. What difference would it make whether there was hung up in the brewery a list?

Mr. McCall: I don't know that there would be any, your Honor.

The Court: I don't know what you are driving at. We are taking up time, I think, on nonessentials.

Mr. McCall: All right, sir. I will eliminate the question. [42]

Q. (By Mr. McCall): How long did you continue in the employ of the Los Angeles Brewing Company after you were re-employed?

(Testimony of Walter F. Ullrich.)

A. Until September the 21st, which was my last day.

The Court: April 29th to September 21st?

The Witness: Yes, sir.

Q. (By Mr. McCall): Now, what occurred after that time? I will state it this way: Did you return to the Los Angeles Brewing Company's plant on October 23rd for the purpose of going back to work?

A. Yes, sir.

Q. Was that a Monday?

A. That was on Monday.

Q. But you did not go back to work?

A. No, sir.

Q. Why?

A. There was a picket line around the plant.

Q. Was that the first time that the picket line had been there? A. Yes, sir.

Q. Did you enter the plant and see Mr. Hoff on the following Wednesday?

A. Yes, we talked to Mr. John Hoff.

Q. Who is Mr. Hoff?

A. He is the bottling house superintendent. [43]

Q. Is he in charge of the bottlers?

A. Yes, sir.

Q. Now, what conversation did you have with Mr. Hoff at that time about your back pay and any termination slip?

Mr. McRoberts: To which I object, if the Court please. It was testified that he left the brewery's employment because he would not go through a

(Testimony of Walter F. Ullrich.)

picket line. Under the Act the brewery is then under no further obligation.

The Court: I wouldn't be so sure of that. I don't see what the back pay has to do with the situation. Any conversation that occurred about his work is material. We are not going to get into a labor dispute in this case because we have no right to get into that.

Q. (By Mr. McCall): Did you have a conversation with Mr. Hoff at that time as to whether or not you were then in the employ of the company? A. Yes, sir.

Q. Now, what was said by Mr. Hoff at that time about that?

A. Well, Mr. John Hoff, he told us that we weren't discharged, we were still on the pay roll, and that our jobs were still there.

Q. What was the occasion for him making that statement?

A. Well, there was five older men didn't have a statement on their pay checks that they were discharged, so that [44] they could go down and sign up for the unemployment insurance.

Q. Did they have such a statement as that required?

A. They had to have a discharge statement, that they were discharged, or were fired, or something like that.

Q. And Mr. Hoff's statement was made in regard to that inquiry by you employees?

A. Yes, sir.

(Testimony of Walter F. Ullrich.)

Q. The men in there with you, were they men who had been out on strike?

A. Yes. We didn't go out. We did refuse to cross the picket line, these seven fellows that went in to see Mr. Hoff.

Q. You were not on the picket line?

A. Yes.

Q. You were or were not?

A. I was not on the picket line. I refused to go through the picket line.

Q. How long did you stay around there on October 23rd?

A. I went right back home after.

Q. And this conversation you had with Mr. Hoff was on the regular pay day, Wednesday, October 23rd?

A. Yes, sir.

Mr. McRoberts: Counsel, may I ask, was it September 23rd or October 23rd.

Mr. McCall: September.

Mr. McRoberts: Yes. You said "October." [45]

The Court: It was September?

The Witness: Yes, September 25th.

The Court: 25th?

The Witness: It was on pay day, yes, sir. The picket line was on the 23rd.

The Court: We have got the strike, and the picket line was placed there on the 23rd, but the conversation was on pay day, September 25th?

The Witness: Yes, sir.

The Court: And the picket line was still in existence on that date?

(Testimony of Walter F. Ullrich.)

The Witness: Yes, sir.

Q. (By Mr. McCall): Now, did you thereafter have a talk with Mr. Hoff about returning to work, active work?

A. Yes, sir; the following Monday. That was September 30th.

Q. What time was it?

A. Well, it was around 10:00 o'clock, or close to that.

Q. Who was present?

A. Well, there was Glen Busick, Harry Fisher, Fritz Huessler, Orville Parker, George Jones, Youl Homan, and myself.

Q. Did you speak for the group?

A. Well, we all spoke there, more or less.

Q. All right. What was said by Mr. Hoff about you men returning to work? [46]

A. He said our jobs were there and we could go back to work. So we told him we would be in the following morning, ready to go to work. So he told us that first we would have to go down to see Mr. Ziegler and get a clearance from the union.

Q. Who is Mr. Ziegler?

A. He is the secretary of the Teamsters Union.

Q. The secretary of which one of the Teamsters Unions? Teamsters Union 896, or is that the Bottlers Union?

A. The Bottlers Union, Local 896.

Q. Now, Mr. Hoff's words were that you would have to go down to see him on what?

(Testimony of Walter F. Ullrich.)

A. Yes, and get a clearance first.

Q. Get a clearance for what?

A. So we could come back to work.

Q. Did you go down to see Mr. Ziegler?

A. Yes, we did.

Q. On what date?

A. The same day, right after the conversation with Mr. John Hoff.

Q. Where did you go to see him?

A. Why?

Q. Where?

A. Down at the Labor Temple.

Q. I will ask you if you were a member of the Brewery [47] Workers Union 293.

A. Yes, sir.

Q. You were at that time?                      A. Yes, sir.

Q. Now, did you see Mr. Ziegler over at the Teamsters?

A. Yes, sir; we saw Mr. Ziegler over there.

Q. What was said about your returning to work?

A. Well, he asked us what he could do for us. So one of the men that was in our group, he got up and said we wanted to return back to work.

Q. Who was that?

A. That was Fritz Huessler.

Q. And what did Mr. Ziegler say?

A. He told us that we were all through over at Eastside, the Los Angeles Brewing Company, and that our jobs had been replaced. So I told him that Mr. Hoff just told us half an hour or an hour



(Testimony of Walter F. Ullrich.)

ago that our jobs were there, that we could go to work.

Q. What did he say to that?

A. Well, I don't think the lady would write it down.

Q. Well, did he say that you might join the Teamsters Union?

A. He said we could sign up and he might find something here or there for us.

Q. Was he referring to finding something for you to do [48] at the Eastside Brewery?

A. No, not at the Eastside. He said that was out.

Q. That was out. What did you do after this conversation with Mr. Ziegler?

A. Well, we all went home then. Then the next day I went up to see Mr. Koenig.

Q. Thereafter did you return to the Los Angeles Brewing Company plant and again offer to go to work?

A. Yes, through Mr. Koenig's advice, Samuel Dobbs and myself and Selden Johnson saw Mr. John Hoff on October 5th, on Saturday, and reported to go to work.

Q. What time was that?

A. That was around 1:00 o'clock in the afternoon.

Q. What did Mr. Hoff say at that time about your coming to work?

A. Well, he said that as far as he was concerned

(Testimony of Walter F. Ullrich.)

our jobs were still there, but that he orders not to put us back.

Q. Now, did he make any call?

A. Yes, he made a phone call, and I don't know just who he called.

(Testimony of Walter F. Ullrich.)

Mr. McRoberts: I object to any further testimony as to a telephone call, your Honor. We have gone rather far afield, and it is hearsay.

Mr. McCall: I haven't asked him for that conversation. [49]

Q. (By Mr. McCall): Did he say that you could or could not return to work?

A. He said as far as he was concerned our jobs were still there.

Q. Yes, but what?

A. But that he was more or less with his hands tied, and he couldn't do anything unless he got the O.K., I guess from the union, the Teamsters Union.

Q. Well, he said you couldn't work, anyway. Did he tell you you could or not?

A. That we couldn't go to work.

Q. Now, you didn't go back to work there any more?

A. No, sir.

Q. The last day you worked, then, was October 21st?

A. No, September 21st.

Q. September 21st. And the date that Mr. Hoff last told you that you couldn't work there was October 5th; is that it?

A. Yes, sir.

Q. All right. Is Local Union No. 293, the International Brewery Workers, still in existence?

(Testimony of Walter F. Ullrich.)

A. Yes, sir.

Q. Do you pay dues to it?

A. Well, not—you pay dues when you work a 40-hour week. If you don't work 40 hours, then you don't pay any dues [50] for that month.

(Testimony of Walter F. Ullrich.)

Q. But you have a book? A. Yes, sir.

Q. And paid dues all the way up to when?

A. Right up to date. I am a good member, in good standing in that local.

Q. When was the last time you paid dues?

A. Well, September.

Q. September of 1946? A. Yes, sir.

The Court: Was that on checkoff? Is that the way the dues were paid?

Mr. McRoberts: No, your Honor. We have no checkoff.

The Court: The dues are paid by you yourself, personally?

The Witness: Yes, sir.

Mr. McCall: To whom did you pay them?

The Court: You understand what I mean? You pay the dues personally?

The Witness: Yes, sir.

The Court: The employer, the brewery company, did not deduct the dues?

The Witness: No, sir. I paid them personally.

The Court: That is the same union or the same unit—let us use that term—that you belonged to before you went into service? [51]

The Witness: Yes, sir.

(Testimony of Walter F. Ullrich.)

Mr. McCall: I believe that is all.

Cross-Examination

By Mr. McRoberts:

Q. Mr. Ullrich, were you ever discharged by the Los Angeles Brewing after you returned from service? A. No, sir.

Mr. McRoberts: That is all.

Mr. McCall: I object to that, your Honor, as a conclusion.

The Court: What do you mean, you were never discharged? Why didn't you continue to work there?

The Witness: Well, when we came to work on Monday, the 3rd of September, they had that picket line around there, and I didn't know anything about it, so I respected the picket line. And I didn't want any trouble, so I went home that day, and inquired about the picket line, and after I found out that it was in sympathy with the fellows that had been discharged previous to that, and that it was more or less a peaceful picket line, I went back and asked for my job back.

The Court: And you got it back?

The Witness: No, sir.

The Court: You didn't get it at all?

The Witness: Pardon?

The Court: You didn't get the job at all? [52]

The Witness: No, sir.

The Court: And you were told you would have to see some man in the Teamsters Union?

The Witness: Yes, sir.

(Testimony of Walter F. Ullrich.)

The Court: In other words, as I understand, or, who was this man that represented the brewery that you talked to there? Mr. Koenig?

The Witness: Koenig?

The Court: Who was the man you talked to when you came back after not having gone through the picket line?

The Witness: Oh, Mr. John Hoff, the bottling house superintendent over at the brewery.

The Court: What did he say to you about it?

The Witness: He said our jobs were there and we could go to work; they were open to us.

The Court: Why didn't you immediately commence work?

The Witness: Well, because first we had to go down and get a clearance from the Teamsters Union.

The Court: Who told you that?

The Witness: Mr. Hoff.

The Court: So that the brewery, through its representative, told you that before you could go to work you had to get a clearance from a certain union?

The Witness: Yes, sir.

The Court: That was not the union of which you were a [53] member?

The Witness: No, sir.

The Court: And was not the unit that you had been affiliated with before you went into the service?

The Witness: No, sir.

The Court: That is all.

Mr. McRoberts: May I ask one more question?

The Court: Yes.

(Testimony of Walter F. Ullrich.)

Q. (By Mr. McRoberts): Mr. Ullrich, have you been employed since September 23rd?

A. No, sir.

Q. Have you tried to get employment?

A. Yes, I have tried all over.

Q. Have you had any income during that period from any source?

A. I can't hear you very plain.

Q. What have you lived on since September 21st to date? Have you been paid, too, by the union?

A. With all the money I saved together, and with what the union paid me, I have existed.

Q. How much did the union pay you?

A. \$25.00.

Q. \$25.00 a week? A. That's right.

Q. You got more money than Mr. Iob did? [54]

A. Well, he drew the other.

Q. Did you draw any other unemployment insurance, or anything like that? A. No.

Mr. McRoberts: That is all.

#### Redirect Examination

By Mr. McCall:

Q. How do you account for the difference between the \$15.00 that Mr. Iob got and the \$25.00 you got?

A. Well, if we had got unemployment insurance of \$20.00 a week, the union paid \$15.00. If you didn't get that, then the union paid the individual member \$25.00.

Q. And you couldn't get your unemployment in-



(Testimony of Walter F. Ullrich.)

insurance because you could not get a clearance slip or dismissal slip from the union?

A. Something like that.

The Court: From the union?

The Witness: No, a discharge from the brewery.

The Court: Let's get that straight, because that is an important feature. In order to qualify for unemployment insurance you had to have some memorial or certificate or writing, or some evidence that your employer had no work for you, and that you were out of work; is that right?

The Witness: Yes, sir.

The Court: Did you ask the brewery for such a certificate? [55]

The Witness: Well, when we went up to the Unemployment, we had to fill out these different applications, and then they, in turn, would call the plant about each individual case.

The Court: Did they call the brewery in your case?

The Witness: Well, I think they did.

The Court: You just assumed that they did?

The Witness: Yes.

The Court: You didn't take it up, yourself?

The Witness: Because I never drew it.

The Court: When you were told by the representative of the brewery that your job was open to you, but that in order to fill it you would have to see this representative of the Teamsters Union and get a clearance——

The Witness: Yes.

(Testimony of Walter F. Ullrich.)

The Court: ———what did you say to him?

The Witness: Well, I told Mr. Hoff that we would return to work the following day. That would have been on a Tuesday.

The Court: Yes.

The Witness: And the only thing that stopped us was that Mr. Ziegler from the Teamsters Union, he wouldn't give us a clearance.

The Court: That is all.

Mr. McCall: That is all.

(Witness excused.) [56]

Mr. McRoberts: I am willing to stipulate that Mr. Dobbs' testimony will be the same as this witness'.

Mr. McCall: Well, I don't want to stipulate as to dates.

The Court: The dates are set up in the pleadings.

Mr. McCall: All right. It is stipulated that Mr. Dobbs will testify the same thing as Mr. Ullrich.

Mr. McRoberts: Yes.

Mr. McCall: Mr. Cowdrey, will you take the stand?

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### GEORGE E. COWDREY

called as a witness by and on behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

The Clerk: Will you state your name, please?

(Testimony of George E. Cowdrey.)

The Witness: George E. Cowdrey.

The Clerk: How do you spell the last name?

The Witness: C-o-w-d-r-e-y.

By Mr. McCall:

Q. Mr. Cowdrey, what is your occupation?

A. Formerly bottling shop superintendent at Stewart McKee.

Q. That is Stewart McKee Brewing Company?

A. Brewing Company.

Q. How long were you there?

A. About five years. [57]

Q. Are you at present connected with Stewart McKee?      A. No.

Q. Are you a member of the International Brewery Workers Union?      A. Yes, sir.

Q. Which one?

A. International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America.

Q. Which local?      A. 293, Branch 3.

Q. How long have you been a member of that?

A. Since 1935.

Q. Is that local union still in existence?

A. Yes, sir.

Q. Did any of its officers leave that local in May or June of 1946?      A. Yes, sir.

Q. And organize a Teamster Union?

A. Yes, sir.

Q. Thereafter, did the local of which you speak continue in existence?      A. Yes, sir.

Q. And elect officers?      A. Yes, sir.

(Testimony of George E. Cowdrey.)

Q. Now, what is your present connection with the [58] International Brewery Workers?

A. International representative.

Q. Are you familiar with the affairs of the locals in Southern California? A. Fairly well.

Q. Was there a strike called at the Los Angeles Brewing Company in September, 1946?

A. Yes, sir.

Q. Was a vote taken at the local unions to establish a picket line?

A. It was agreed that if these discharges continued that they would picket the place.

Q. What discharges do you mean? What was the picketing for?

A. Firing such men as Iob and John Giovanazzi, old-timers.

Q. That was at the Los Angeles Brewing Company? A. Yes, sir.

Q. In other words, the picket line followed the discharge of Iob, among others?

A. Yes, I would say that.

Mr. McCall: I believe that is all.

Mr. McRoberts: No questions.

(Witness excused.)

Mr. McCall: This is our last remaining witness, your [59] Honor. Will you take the stand, Mr. Koenig?

## V. H. KOENIG

called as a witness by and on behalf of the petitioners, having been first duly sworn, was examined and testified as follows:

## Direct Examination

The Clerk: Will you state your name, please?

The Witness: V. H. Koenig, K-o-e-n-i-g.

By Mr. McCall:

Q. Mr. Koenig, what is your position?

A. Veterans' Assistance Officer for Southern California for the Selective Service System.

Q. I believe that you, in that capacity, looked into the re-employment cases of the petitioners in this case.

A. Yes, sir.

Q. Did you have contact with Mr. Lick of the Los Angeles Brewing Company in regard to this matter?

A. I did.

Q. In whose behalf did you first see and talk to Mr. Lick? Which one?

A. The first meeting I had with him involved only one case, and that was the Iob case.

Q. Do you know on what date it was you saw him and talked to him?

A. I have my file there; if I could look at it, I could [60] tell you the date.

The Court: You may get the file.

(The witness referred to a file.)

The Witness: October 2, 1946.

Q. (By Mr. McCall): Where did this meeting take place?

(Testimony of V. H. Koenig.)

A. In his offices in the Los Angeles Brewery Building on North Main Street.

Q. About what time of day?

A. During business hours. I wouldn't remember. It was between 9:00 and 4:00 of the day.

Q. Now, did you discuss with Mr. Lick, or did he say anything in regard to whether or not returned veterans were entitled to work at the brewery regardless of union membership?

Mr. McRoberts: To which I object, your Honor, as incompetent, irrelevant, and immaterial.

The Court: Overruled.

The Witness: I did have a conversation with him at that time.

Q. (By Mr. McCall): On that subject?

A. Upon that subject, among others, a lot of other things. But that was one of the subjects of discussion.

Q. Now, state to the court how that subject came up, and what was said about it.

A. I was brought down to Mr. Lick's office by another man, named Doub. [61]

Q. From the brewery?

A. From the Los Angeles Brewery, yes. I think he was personnel manager, or the head of that department. And Mr. Lick, as I understand, was vice-president and general manager of the Los Angeles Brewing Company.

A. I told him I had a series of complaints that had been filed by veterans, and one of them in-



(Testimony of V. H. Koenig.)

volved his place there. He stated to me that they had been very careful not to violate any veteran's rights; that they had no—that there were no cases of veterans with veterans' rights who had not been employed, or as to whom employment was not recognized. So I told him that I was certain there was, that this man claimed to be an employee, and gave him the name of Fred Iob. So he telephoned to someone in the plant to procure the personnel records of this Fred Iob. We sat down and waited for compliance with that phone call, and he told me—Mr. Lick stated that he knew that they were liable to the veterans for a year's employment and that he was certain that there must be some error because they had checked to make certain that the veterans were not put out or laid off.

In answer to his phone call, either someone came in or phoned him, I don't remember that, but, anyway, the records could not be found of Fred Iob, and on that particular subject that was all that was said at that time.

Q. I see. This conversation occurred on what date, [62] again?      A. October 2, 1946.

Q. Was that about the date, also, that you had a conversation with Ullrich and Dobbs?

A. No, that was subsequent.

Q. Subsequent to that time?      A. Yes.

Mr. McCall: That is all.

Mr. McRoberts: No questions. [63]

Mr. McRoberts: If your Honor please, I want to make the motion we discussed earlier, to dismiss the complaint, as it is based on the question of having the court take jurisdiction to determine a labor dispute. It is not an out and out matter of a provision of the Selective Service and Training Act, but, on the contrary, is an attempt to declare the contract signed by the defendant with the Joint Local Executive Board of California, Exhibit "A" to its answer, is not a bona fide contract, and a corollary to that raises the presumption that the Joint Local Executive Board is not a labor union within the purview of the Wagner Act. On those two grounds, and on the authority of the so-called James case, 106 Fed. (2d) 871, [79] we believe that this petition should be dismissed.

The Court: The motion will be denied without prejudice. I think it is a very close question. It illustrates the dire consequences of certain of this labor legislation in the last 15 years, and it may be that the effect of it is to impinge upon a veteran's rights to the extent that the relief which he should be accorded in these cases cannot be accorded. But I am not clear on that yet. I want to read these decisions which have been cited. So I will deny the motion at this time without prejudice.

Mr. McRoberts: I will call Mr. Ziegler.

## ROBERT ZIEGLER

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

## Direct Examination

The Clerk: Will you state your name, please?

The Witness: Robert Ziegler.

The Clerk: How do you spell the last name?

The Witness: Z-i-e-g-l-e-r.

By Mr. McRoberts:

Q. Will you state your business or occupation, Mr. Ziegler?

A. My position is co-ordinator of the veterans' program for the American Federation of Labor.

Q. And your offices are where? [80]

A. My office is at 306 West Third Street, and located within the Veterans' Service Center.

Q. Were you occupying that position or discharging those duties as a co-ordinator from last September to the present time?

A. I have been co-ordinator for the American Federation of Labor officially for three years and two or three months.

Q. Would you describe to the court just what your duties as a co-ordinator are, of what they consist?

A. My duties are, of course, primarily to establish policies and procedures in behalf of the veterans under the jurisdiction of the American Federation of Labor. Such policies were to include waiving or reducing of initiation fees, and the assistance

(Testimony of Robert Ziegler.)

that could be given in any of the employment problems of veterans. My duties also were to counsel veterans and place them according to their aptitudes or talents or abilities which they seemed to possess, and my work has been on a national scale from here, and I have done it really principally to introduce such procedures.

Secondly, as co-ordinator, I was also required, and, as a matter of fact, it evolved out of the general work, to be mediator, to be a friendly adviser to courts, and I have been in that capacity before practically all of the courts in this town, in assisting veterans to obtain their just rights or relief, or in obtaining probations if they were found guilty. [81]

My work included also to assist in bringing about an understanding between veterans and their employers, between veterans and union executives, with their business agents or other officials, or shop foremen, and to fight for the best interests of the veterans.

At the same time, of course, my duties are clearly defined, that they should always remain within the limitations of agreements or policies and procedures, as they have been established over a period of many years.

Q. Are you acquainted with Mr. Fred Iob, who sits in the courtroom?           A. I am, sir.

Q. Did you meet Mr. Iob in the discharge of the duties you have mentioned here?

(Testimony of Robert Ziegler.)

A. I did. And if it pleases the Court, I should like to state that I was asked by a group of young men that were in disagreement with the local unions over whom I have jurisdiction, by virtue of my position. Four or five young men came to my office, and they came for my assistance and stating their differences.

Q. Did that include Mr. Iob?

A. Mr. Iob, and which was as a direct result of my assuming this responsibility.

Q. Now, did you have a conference at the Los Angeles Brewing, at which Mr. Iob, Mr. Elmer Schaffer, and various [82] other persons were present, sometime in the fall of 1946?

A. I did, sir.

Q. Would you state to the court just the conversation that was had at that time?

A. Well, I reminded Mr. Iob and the other parties present, that, as co-ordinator in the veterans' program of the American Federation of Labor, I had issued a directive as a result of my investigations, and these investigations included talking to the strikers, talking to the employers, talking to the various union executives, and examining the records, and I had determined that the strike was illegal; and I had requested all the various unions, and also the employers, to enable the veterans to go back to work and forget the past, forget the attitude, even the fact that they had been striking or picketing. And I reminded Mr. Iob of that fact.



(Testimony of Robert Ziegler.)

I had invited through this directive all the striking—the handful of striking men, and among them some veterans, that they were invited to join the union, all the four unions having jurisdiction; that the roster would be open for them, and that the past be forgotten. And in some cases I believe some of the boys——

Mr. McCall: If the Court please, I object to the testimony of the witness as being immaterial.

Mr. McRoberts: Just a minute.

The Court: I think you had better interrogate the [83] witness.

Mr. McRoberts: Very well, your Honor.

Q. (By Mr. McRoberts): Also, at its conference at the Los Angeles Brewing, did Mr. Iob indicate he wished to join the Teamsters Union, or did he refuse to join?

A. Well, he refused to join, in spite of my request to do so and my advising him.

Mr. McCall: I object to that as not responsive.

Q. (By Mr. McRoberts): Now, at that time did you have a talk with any representative of the brewery with respect to the employment or the continued employment of Mr. Iob?

A. I did, sir.

Q. And with whom did you have that conversation?

A. Well, I had the conversation with, I believe, Mr. Schaffer and with——

Q. I mean an officer of the brewery, Doctor. Did you ever talk with Mr. Lick in this time?



(Testimony of Robert Ziegler.)

A. Oh, with Mr. Lick personally. The conference was held in his office.

Q. Now, did you have a conference in Mr. Lick's office, at which time Mr. Schaffer and Mr. Iob, to name but a few, were present?

A. Yes, indeed.

Q. Now, at that time did Mr. Lick make any statement to you with respect to the defendant's attitude toward Mr. Iob's [84] continued employment?

A. Well, the attitude was, or, rather——

Mr. McCall: I object. He asked if he made a statement.

Q. (By Mr. McRoberts): Just state, if you can recall, Doctor, what Mr. Lick said, if anything, bearing upon Mr. Iob's continued employment.

A. Well, Mr. Lick stated, so far as I can recall, that the boy had been placed back to work, even in preferred employment, and he had been able to make a large amount of money; if I recall, some \$110.00——

Mr. McCall: Your Honor, I object to that.

The Witness: ——or \$120.00 in the first week.

Mr. McCall: If your Honor please, I object to that.

The Witness: Your Honor——

The Court: Wait a minute.

The Witness: I also object.

The Court: Wait a minute. Now, just conduct yourself as a witness here, please.

(Testimony of Robert Ziegler.)

The Witness: I am sorry.

Mr. McCall: The question, your Honor please, was whether or not Mr. Lick had made a statement about the continuance in employment of Mr. Iob, and what the witness is testifying to now is something else.

Mr. McRoberts: That may go out, Mr. McCall.

The Court: Just confine yourself to the questions, Mr. [85] Witness.

Q. (By Mr. McRoberts): Doctor, I am just trying to find out if there was any statement made by Mr. Lick with respect to Mr. Iob's continued employment, which I understand had been interrupted at that time by the demand of the Teamsters Union.

A. Well, Mr. Lick made two statements, so far as I can recall. One, that he would be willing to re-employ him, but also indicating that his work had not been satisfactory because he had evidenced a very belligerent attitude.

Q. Now, did you have a subsequent conversation with Mr. Iob and any representative of the brewery concerning his employment?

A. I must confess this goes back several months, and I have had many such conferences with the men involved, including Mr. Iob, in which I suggested returning to work and accepting the democratic verdict of the——

Mr. McCall: I object, your Honor. The answer is not responsive.

(Testimony of Robert Ziegler.)

Mr. McRoberts: It is responsive insofar as the suggestion that Mr. Iob return to work, and I am willing to concede that the rest is not——

The Court: Is overly responsive.

Mr. McRoberts: Is overly responsive, that is right.

Q. (By Mr. McRoberts): Doctor, Mr. Iob returned to his [86] duties sometime in October, did he not? He was first terminated in September, and then restored sometime later in September or early in October? Is that your recollection?

A. I believe so, yes.

Q. And then his services were again terminated; is that your recollection?      A. Yes.

Q. Now, at the time of his second termination, did you have a conversation with Mr. Lick, in which Mr. Lick and Mr. Iob were present, as you recall?

A. Well, I do recall a conversation relative to the dismissal of Mr. Iob on the grounds that his employment was contingent upon him joining the union, as a condition of employment.

Q. Now, who told you that, Doctor?

A. That was told me both by Mr. Lick and by an attorney of the defendant.

Q. You mean myself?

A. Yourself and another attorney, whom I happened to meet in San Francisco.

Q. I see. Now, was there anything else said concerning Mr. Iob's employment, after this second termination of employment? In other words, Doc-

(Testimony of Robert Ziegler.)

tor, to review your testimony, if I may, you stated you were advised at this second meeting that Mr. Iob's employment was being terminated by reason of [87] the union's demand, and that was the sum and substance of any statement made by Mr. Lick or by any officer of the corporation; is that correct?

A. That is correct.

Mr. McRoberts: That is all. Thank you, Doctor. Cross-examine.

Mr. McCall: That is all.

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### ELMER SCHAFFER

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

The Clerk: Will you state your name, please?

The Witness: Elmer Schaffer.

By Mr. McRoberts:

Q. What is your business or occupation, Mr. Schaffer? A. I am a brewer.

Q. Do you have any other occupation?

A. I am the secretary of Local 893, Branch 4, of the American Federation of Labor Brewers, affiliated with the Teamsters Union.

Q. How long have you been a brewer?

A. 36 years.

Q. How long have you been employed by the Los Angeles [88] Brewing Company?

(Testimony of Elmer Schaffer.)

A. Going on 11 years.

Q. Now, were you ever a member of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America, Local No. 7?

A. I was.

Q. For how many years?

A. Well, of Local 7 I was for 10 years, and then in Local 10 the rest of the 26 years.

Q. Local 10? A. Of Baltimore, Maryland.

Q. Local 10 was the predecessor of Local 7?

A. Yes.

Q. Did you have any official capacity in Local 10 or Local 7?

A. I held an official capacity in Local 7 from 1938 to 1941, as their secretary of Branch 4.

Q. Do you hold a position—I believe you testified you are secretary of your present local?

A. I am, yes, sir.

Q. All right. Now, prior to July 28, 1946, you were then employed in the brew house of the Los Angeles Brewing Company?

A. I was employed in the brewing department of the Los Angeles Brewing Company. [89]

Q. To your knowledge, did the Los Angeles Brewing Company recognize any closed shop arrangement concerning employees in its brewing department? A. Prior to——

Mr. McCall: If your Honor please, I am going to object. The word “closed shop” is used, and I would like to know what is meant by that term, and

(Testimony of Elmer Schaffer.)

what the witness is talking about when he uses the term. I object to the question because it calls for a conclusion of the witness, and ought to be more definite.

Mr. McRoberts: All right. We will do that.

Q. (By Mr. McRoberts): Prior to July 28, 1946, Mr. Schaffer, were all employees of the brewing department of the Los Angeles Brewing Company members in good standing of Local Union No. 7, Branch 4, of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America?

A. Is that prior to July 28, 1946?

Q. That is right. A. They were.

Q. And from what source did the brewery procure its employees in the brewing department?

A. Through the union.

Q. And all of their employees?

A. All of their employees.

Q. Now, on July 28th you became a member of the Joint [90] Local Executive Board of California?

A. I did.

Q. And you became an officer about that time?

A. An officer, yes, sir.

Q. After that date to what union did the members, the employees in the brewing department of the defendant brewery, belong?

A. After July 28th?

Q. Yes, that is right.

A. Well, the majority of the members voted to



(Testimony of Elmer Schaffer.)

join the A. F. of L. Brewery Workers, affiliated with the Teamsters Union, because prior to that they had voted, defeating by nine to one affiliating with the C.I.O. in the State of California.

Q. Now, is your organization affiliated with the Joint Local Executive Board of California?

A. It is.

Q. And that Joint Local Executive Board are labor unions? A. They are labor unions.

Q. And they carry on collective bargaining negotiations with various companies?

A. They do.

Q. To your knowledge, are there any members or employees in the brewing department of the defendant brewery who are not members of your local? [91]

A. There is not one of them. They all belong to the union.

Mr. McCall: You mean at the present time?

Mr. McRoberts: I said "now."

Q. By Mr. McRoberts: Is employment handled through your office?

A. It is handled through my office; must be cleared through my office.

Q. And you furnish the brewery company with such employees as it needs in its brewing department? A. I do.

Q. Are you acquainted with Mr. Fred Iob?

A. I am.

Q. Directing your attention to sometime in Sep-

(Testimony of Elmer Schaffer.)

tember of 1946, did you have a conversation with him with respect to his continuing in the employment of the defendant brewery?      A. I did.

Q. Who was present at that conversation, and where did it take place?

A. Well, Mr. Iob came down to my office in the Labor Temple and asked me if he could go back to work. I stated that he could. Then I explained to him that our setup was not the same as it had been before, when he left to go into the services; that during this conference in Cincinnati in May, that they had put out a referendum vote, and, of course, California voted nine to one not to accept the joining in the C.I.O., and that we had affiliated ourselves with the Teamsters Union.

Mr. McCall: This answer is not responsive, your Honor.

Mr. McRoberts: It is relating a conversation which he had.

The Court: That is what I understood. You are telling what you told him?

The Witness: Yes.

The Court: You may continue.

The Witness: And I explained to him, to the best of my knowledge, that although the majority of the men had gone that way, that I am not refusing him any work. I neither used coercion nor any persuasion. I only explained to him, as a gentleman should, that that was the setup, and that I believed he could sign over with us and everything be O.K.

(Testimony of Elmer Schaffer.)

Q. By Mr. McRoberts: Did he, in effect, accept your offer?

A. No, he did not. He would not sign over to the Teamsters.

Q. Now, did you after that serve a written notice upon the defendant to discharge Mr. Iob by reason of his lack of union affiliation?

A. Well, now, I don't want to get ahead of my story.

Q. Just answer. Did you do that? [93]

A. Yes, sir.

Mr. McRoberts: If your Honor please, I hate to break the continuity. These were read into evidence. They do not have an exhibit number, but I think that as to the letters he refers to it can be stipulated they were the ones read into the record.

Mr. McCall: Yes, I think so.

The Court: Do you want to offer them in the record here physically?

Mr. McCall: No, I don't care about that.

Q. By Mr. McRoberts: You did advise the defendant then in writing to discharge Mr. Iob for the reasons you have stated? A. I did.

Q. Did you at that time threaten the defendant with any economic reprisals in the event they refused to follow your notice? A. I did not.

Q. Did you at any time threaten the brewery with a strike or economic boycott, if they continued to keep Mr. Iob on? A. I did.

Q. Now, after the first letter was received and

(Testimony of Elmer Schaffer.)

the first termination, did you after that clear Mr. Iob for re-employment? [94]

A. I was ordered so by the Selective Board.

Q. Just answer the question. You did that?

A. Yes.

Q. Now, would you state to the court under what circumstances you cleared Mr. Iob for re-employment?

A. That was through an order of the Selective Board, under the Selective Act, that is.

Q. Who signed that order?

A. Well, I don't know. I never seen the order.

Q. Someone told you that the order existed?

A. That's it.

Q. Do you know what party told you that?

A. I don't recall the party's name just right now, because it has been such a confusing thing, and I have just slipped up and forgotten his name.

Q. Now, after you heard of this purported order or believed in its existence, did you then contact Mr. Iob and tell him to report to the brewery for work?

A. Well, he was notified through this Selective Board to come to the Los Angeles Brewing Company and see me about his job.

Q. All right. Did he see you?

A. Yes, he did.

Q. Did you have a conversation with him at that time?

A. Well, all I understand was that he was to go back to [95] work, and I told him that there would

(Testimony of Elmer Schaffer.)

be no molestation of him, everybody would treat him fine, to forget the past, and he should go along and do his duty as asked of him.

Q. All right. Now, then, after that you served another written notice upon the brewery to again terminate his service?           A. Yes, I did.

Q. What changed your mind on that?

A. Well, I happened to be called into a conference in San Francisco, and our attorney up there found out that I had put Brother, Mr. Iob, back to work, and he wanted to know why, and I told him there was an order of the Selective Service Board. Well, he says, "Nothing doing, but," he says, "I want you to do this. I would like for you to talk to Mr. Iob and ask him if he would think it over and come on and affiliate with us, and if he don't, why, naturally, there was only one thing I could do;" that is, to order me to have him discharged.

Q. All right. Did you follow out these instructions and contact Mr. Iob?

A. I personally—I followed out the orders, but personally I didn't contact him, but left it up to the shop steward and another witness to go to Mr. Iob.

Q. Well, you yourself did not do it?

A. No, I did not.

Q. Then, after that, were you advised that Mr. Iob had not joined your organization? [96]

A. I was.

Q. Did you at that time serve a second letter upon the defendant?           A. I did.



(Testimony of Elmer Schaffer.)

Q. To terminate his employment? A. Yes.

Q. And was it at that time that you threatened strikes or economic reprisals if your demands were not met? A. I did.

Q. Were you present at the office of the defendant corporation at any time when there was a conference between yourself, Dr. Ziegler, and Mr. Iob, to name a few? A. I was.

Q. Was Mr. Lick, of the Los Angeles Brewing Company, there at that time?

A. Mr. Lick was there.

Q. Did Mr. Lick make a statement to you with reference to his attitude toward Mr. Iob?

A. Not so far as I can recall.

Mr. McRoberts: That is all. Cross-examine.

### Cross-Examination

By Mr. McCall:

Q. Mr. Schaffer, you say that for 10 years you were a member of Local 7, up to July, 1946?

A. I was. [97]

Q. And at that time did you sever your membership there and join the Teamsters Union?

A. Not in those 10 years, up until July.

Q. I mean, at what time did you acquire membership in the Teamsters Local No. 893?

A. July 29th.

Q. That is on the day following the signing of this contract?

A. No, that—I will take it back. It was the 28th.

Q. The 28th. On the same day, then. In other



(Testimony of Elmer Schaffer.)

words, you joined the Teamsters Local 893 and entered into this contract, working contract, on the same day; is that correct?

A. No, I have to take that back. I made a misstatement there. I was in that there—I can't recall the date. It wasn't the 28th, because the contracts were signed after we affiliated ourselves with the Teamsters Union.

Mr. McCall: Could I see Exhibit 3, please?

(The document was handed to counsel.)

Q. By Mr. McCall: Are you acquainted with the negotiations by which Teamsters Local 893 came into existence?

Mr. McRoberts: To which I object, your Honor. We are again getting into the realm of the jurisdiction of the Labor Board, or the jurisdiction of labor unions.

The Court: We seem to be into that pretty well in this case. [98]

Mr. McRoberts: Yes, we seem to be.

The Court: We will go into it only as far as necessary. Overruled.

Q. By Mr. McCall: Are you acquainted with the negotiations that took place which led to the formation of Teamsters Local 893?

A. No, I am not.

Q. Were you active in taking any part in the organization of this local on or about July the 25th?

A. I was then appointed as secretary.

(Testimony of Elmer Schaffer.)

Q. That was about the day, then, that Teamsters Local 893 was formed; is that right?

A. That I could not swear to.

The Court: Was that last year?

Mr. McCall: In 1946, yes, your Honor.

Q. By Mr. McCall: Do you know the date when that local was formed? I believe you stated, though, that you joined it on July 28th, or a couple of days before that time.

A. The majority of the membership of our organization signed their pledge cards to affiliate themselves with the Teamsters, and that was around about 90 per cent.

Q. Never mind the per cent. What date was it?

A. That was on, if I recall, on the 25th of July.

Q. The 25th of July, of 19— A. '46. [99]

Q. 1946. Now, at that time there was no Teamsters Local, was there, in existence?

A. Well, that I can't answer either.

Q. Well, you were secretary of that organization.

A. I was made secretary after the 25th.

Q. You have a charter that was issued to that local, have you not?

A. I haven't the charter myself, no.

Q. Is there a charter in existence?

A. Well, that would be up in San Francisco.

Q. In other words, you are simply a branch?

A. Just a branch.

Q. Of this local which covers the California brewers; is that right? A. That's right.

(Testimony of Elmer Schaffer.)

Q. But you don't know of the existence of that union at any time before that time?

Mr. McRoberts: If your Honor please, I object to this line of questioning on the ground it is not relevant to any issue before this court, the date of the existence of this union.

Mr. McCall: With that question I will be through.

Mr. McRoberts: All right.

Q. By Mr. McCall: Mr. Schaffer, were you a member of Joint Local Executive Board of California of the Teamsters [100] Union, which entered into this contract of July 28th with the California State Brewers?

A. We were part members; that is, members of that brother local and the Joint Board up in San Francisco.

Q. Were you at that meeting?

A. I was not at that meeting.

Q. Were you a member of this so-called Joint Local Executive Board of California?

A. I am only the secretary of Branch 4, Local 893.

Q. I got the impression a moment ago that you stated you were a member of this Local—Joint Local Executive Board.

A. I didn't state the Joint Board.

Q. Who was the representative of Local 893 on this Joint Local Executive Board?

A. Well, he is the secretary. That had been always the secretary, even up to Local 7.

(Testimony of Elmer Schaffer.)

Mr. McRoberts: Is counsel questioning whether the Joint Local Executive Board is a labor union? What is this line of questioning designed to reach? I object to it as not within the issues.

Mr. McCall: I wanted to get this contract established as having been signed by somebody, and who they were, and perhaps we can stipulate, and then we have some questions. It seems that the contract, which is Exhibit "A" to your [101] answer, purports to have been signed for employees and by James G. Hamilton, of the California State Brewers Institute, for Institute members in Southern California, and it does not name the Los Angeles Brewing Company.

Mr. McRoberts: That is a misprint. I can remedy that, if the Court please. We were a party to it and signed it. The pleadings so show.

The Court: The pleadings show that the defendant Brewing Company was a member of the Institute?

Mr. McCall: It does not.

Mr. McRoberts: Your Honor, we pleaded the contract. We are not a member of the Institute, but the original contract—and, if necessary, I can produce it—was signed by the Institute and by myself on behalf of the defendant, and in the pleadings that last part was unintentionally omitted.

The Court: I see.

Q. By Mr. McCall: Now, Mr. Schaffer, getting back to the discharge—by the way, you were acquainted with Mr. Iob prior to July 28th, were you?

(Testimony of Elmer Schaffer.)

A. Yes, sir.

Q. You knew him before he went into service and afterwards? A. Yes, sir.

Q. Now, you did then, insofar as you are concerned, issue to him a working permit or give him oral leave to work [102] when he returned on September the 9th; is that correct? A. Yes.

Q. And you didn't raise any objection to him going to work? You knew at that time that he was not a member of the Teamsters and didn't intend to become a member, didn't you?

A. Well, as I stated, I was ordered by the Selective Board to put the man back to work.

Q. No, I mean before that time. I am talking about when he first came back, the very first day that he worked, September the 9th, 1946. He came and talked to you before he went to work, didn't he?

A. He did.

Q. And it was agreeable with you that he return to his job?

A. Well, I told him to go ahead and go back to work, and that maybe we could iron this thing out.

Q. I see. Now, what caused you within a week thereafter, to change your mind, that the man should be fired?

A. Because when I stated to him that we would iron this thing out later, I asked him if he would become a member or affiliate himself with our union, and he flatly stated he would not.

Q. Did you have any written working rules to



(Testimony of Elmer Schaffer.)

issue the permit, or did you just permit the man to work?

A. No, we don't use any writing in sending a man to [103] work. A man that is a union man knows his duties, and knows what he is to do, and, therefore, he does his duties as asked of him.

Q. I take it, then, the reference in this contract to the use of working permits does not constitute any written instruments, but is just the oral consent of the union representative?

A. Just what do you mean by "permits"?

May I ask that question, your Honor?

The Court: Yes.

Q. By Mr. McCall: Referring to Section 2 of this contract, the section reads as follows:

"All employees shall be obtained and hired through the respective locals and branches thereof to which the employees in said department are required to belong; provided, however, that should said respective locals be unable to provide satisfactory employees, then and in that event, said employees may be obtained from any source; and provided, further, however, that said employees so obtained through other sources shall be required to apply for a permit card from the respective locals to which the employees in said department belong."

A. Well, but Mr. Iob was not a permit-card man. He was a book man, and permit-card men are only



(Testimony of Elmer Schaffer.)

hired when the season is heavy and we need extra men to pull through the [104] heavy work.

Q. That is a man that doesn't have a book and is not a book man?

A. He is under the rules and the jurisdiction of the union when he accepts the permit card, the same as the book man.

Q. But the book men are the actual members?

A. Yes, sir, the book men are the actual members.

Q. And the permit men are not?

A. They are members so far as their permit allows them. They pay their dues, the same as the regular book men, and are under the jurisdiction of the union.

Q. But you don't consider them members?

A. We consider them members as far as it goes, according to their paying of their dues. We protect them, the same as we do our members. They may not be bona fide members, but we protect them the same as our members.

Q. You would call them, then, a quasi-member?

A. No, they would be permit men.

Mr. McRoberts: May I interpose an objection? I want to apologize for unduly interrupting, but I think we are now trying to prove the validity of a labor union, which we cannot do here. Whether a man was a book man or a permit-card man is immaterial to the issues of this case, as I see it.

The Court: Not entirely. Section 2 seems to pro-

(Testimony of Elmer Schaffer.)

vide [105] for what is commonly called, for lack of a better definition, a closed shop. It does provide, however, that if, as, and when union workers are not available, that workers may be received from other sources, but then it goes into another ambiguity and says, "provided further, however," that that source must be obtained from men who have permits, and in order to get that permit they have to go to the union representative.

Mr. McRoberts: That is right.

The Court: So, while the contract is ambiguous, it apparently is to some extent contradictory. The general purport of it is that it constitutes a closed-shop agreement. I think that is one of the features of the case that calls for very careful consideration, as to whether or not we are not trying a labor case instead of a veterans' case. We are vitally interested in these veterans' cases, but this looks more like a labor case, and if it is a labor case, we have no authority to try it.

Mr. McCall: Yes, I agree with you, your Honor.

The Court: I think you will agree with that.

Mr. McCall: Yes, sir.

Q. By Mr. McCall: Now, you are familiar with Section 4 (b) of the contract, are you not?

A. Well, offhand I am not, no.

Q. Well, that is the section which provides, in substantially the terms of the re-employment provisions of the Selective Training and Service Act, that veterans who have left, honorably discharged

(Testimony of Elhner Schaffer.)

veterans of the armed forces who have left jobs in the employ of brewers, shall, upon application, be re-employed in their former jobs and not be discharged therefrom without cause for one year. You knew about that section?

A. I knew about that section, yes, sir.

Q. Now, your contract was entered into in 1946. I will ask you if it was not your opinion and the opinion of Mr. Lick that the veterans referred to in this provision were those who were returning from the war.

Mr. McRoberts: I object to the witness' opinion, if your Honor please.

The Court: I think we will take judicial knowledge of that fact.

Mr. McCall: Yes, sir.

The Court: The manner in which the statement is clothed in the agreement throws some light on it. In other words, the phrase there is quite a descriptive statement. This reads:

“In the case of any employee inducted into the land and naval forces of the United States of America for training and service under the Selective Training and Service Act of 1940, if such person shall have left [107] his position, other than a temporary position, in order to perform such training and service, and shall have received the certificate prescribed by said Act, and if he is still qualified to perform the duties of such position and makes application

(Testimony of Elmer Schaffer.)

for employment within sixty (60) days after he is relieved from such training and service, the employer shall restore such person to such position or to a position of like seniority, status and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so."

Now, the problem here is whether or not it has been made impossible, by reason of these disputes between labor organizations, for the employer to do what the Selective Training and Service Act says he shall do.

Mr. McCall: Well, I wanted to get the construction that was placed on this particular section by you, your Honor, is the reason I was asking about it. You have this section—

The Court: I think it is clear from his evidence. I do not want to foreclose your examination, but it seems to me it is clear from his evidence so far that before those who had the right to say whom the defendant company shall employ in the brewery, or permit a worker to engage in work in the brewery, that the worker must conform to certain union regulations. Isn't that the purport of the agreement, and isn't [108] that what his evidence shows here?

Mr. McCall: I am trying to show—

The Court: Isn't that the contention that the petitioners make here? In other words, that there is here an economic pressure or a social pressure,

(Testimony of Elmer Schaffer.)

I don't care how you characterize it, but the pressure is this, that the veteran, in order to go to the Brewing Company and go to work, has to go to the representative of the labor union organization and get his approval. So that the Brewing Company, even though it desired to employ him, and even though he desired to work there, could not do so without creating this disturbance. That puts an economic and a social pressure on the veteran, doesn't it?

Mr. McCall: Yes, sir.

The Court: Then how are you going to obviate that, except by commanding the Brewing Company to do something by equitable process which we can't do under law?

Mr. McCall: Well, that is exactly what I think should be done, your Honor.

The Court: Yes, I think a lot of these things should be done, but we have these laws that prevent us from doing it. The federal courts can't issue these injunctions in labor cases. We can't say to an employer, "Here is a veteran who had a job with you before he went into the service, he is back and wants his job back," because the employer is [109] confronted with a collective bargaining agreement that he has made with a union, which says that under no circumstances will he employ anyone excepting with the approval of the union.

Mr. McCall: If your Honor please, that is not what this contract says. I want to be heard on that in argument.



(Testimony of Elmer Schaffer.)

The Court: I am going to hear you, yes, but you read it over and analyze it, and you will find that is exactly what it says, and that is what the evidence shows was done.

Mr. McCall: What I want to ask this witness about now, your Honor, is the fact he interpreted this clause as entitling the veteran to work without union membership.

Q. By Mr. McCall: You didn't require union membership of him when you cleared him for work the first time, did you? A. I did.

Q. You did? A. I did.

Q. Did he promise he was going to join?

A. He said, no, he wasn't going to join.

Q. But you permitted him to work?

A. Under that order of the Selective Service Board.

Q. Even before that didn't you permit him to do so? A. No, I didn't.

Q. I understood you had.

A. No, I didn't permit him to do it until he would— [110] I said, "You think this over."

Q. I see.

A. And I said, "And in that case, if you decide that you want to join up with us, you can go back to work." And he absolutely refused.

Now, I am not in a position to say exactly what day that was, because there has been so much on my mind in this confusion of all these seven or eight months, that it is a pretty hard question to get



(Testimony of Elmer Schaffer.)

everything right, too, but I will do the best I can to tell the truth.

Q. What caused you to change your mind within that week? He worked a week, and you ordered him to be fired.

A. Because he refused to join the union when he was asked to, and because we didn't want the dual organizations working, and we didn't care to have him agitate around the rest of the working men. We had to protect our own interests.

Q. It was for the purpose of protecting your Teamsters Union that you asked him to join?

A. It was to prevent any agitation going on during working hours in this shop.

Q. I see. After he was discharged, you changed your mind again and agreed that he should go to work, didn't you?

A. That was—I didn't put him back to work on my own accord.

Q. He came to see you, didn't he? [111]

A. He did not come to see me.

Q. Before he went to work the second time?

A. No, sir.

Q. Mr. Schaffer, don't you recall that he came to see you and had a personal conversation with you, in which you said that you had made a mistake in causing him to be fired, that he had a right to work anyway?

A. No, sir, I did not make such a statement.

Q. After he did go back to work, you knew he had gone back to work?

(Testimony of Elmer Schaffer.)

A. I told you, through the Selective Service order.

Q. No such order was given to you, was it?

A. No, it wasn't. I took his word for it. In fact, I talked to Mr. Ziegler. Mr. Ziegler told me if there was such an order, I should carry it out.

Q. Who told you that there was such an order?

A. I can't recall the name, just who told me that. I wish I could recall the name.

Q. Do you know Mr. Tony Ziegler?

A. I know Mr. Tony Ziegler, yes.

Q. Mr. Tony Ziegler is the secretary of the Bottlers Union of the Teamsters, isn't he?

A. Yes, sir.

Q. Which Mr. Ziegler are you talking about?

A. I am talking about Mr. Robert Ziegler. [112]

Q. The gentleman who was just on the stand?

A. Yes, sir.

Q. Then you changed your mind the third time and decided to fire him. What caused you to make that change?

A. I did not change my mind the third time. I was called to San Francisco on a conference, and I stated to our attorney up there that through the Selective Service Board we had to put Iob back to work, and he wanted to know why. And I told him there was an order. He said, "When you go back to San Francisco"—I mean "to Los Angeles, you have your shop steward with a witness go to Iob and ask him in a nice way if he is willing, to keep

(Testimony of Elmer Schaffer.)

his job, to sign over with us, and if he refuses, you send a letter for discharge." And I only followed out my instructions.

Mr. McCall: That is all.

Mr. McRoberts: Mr. Clerk, do you have Plaintiffs' Exhibit 2 there?

(The document was handed to counsel.)

### Redirect Examination

By Mr. McRoberts:

Q. You are familiar with the so-called working rules that were in effect in the Brewers from 1936 to 1946?      A. Yes, sir.

Q. Referring to Section 1 (a), which reads as follows:

"Only members in good standing who are members of [113] Local Union No. 7 of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America shall be employed as brewers in the brewing department, malting department, and syrup plants, including all basements, platforms, and wash houses used in connection with the operating of the brewing department, malting department, and syrup plants, and each of them."

I will ask you if that paragraph was performed by the defendant and observed by it at all times.

A. It was.

Q. And all employment was done and carried out pursuant to that?      A. It was.

(Testimony of Elmer Schaffer.)

Mr. McRoberts: That is all.

Mr. McCall: That is all.

(Witness excused.)

Mr. McRoberts: Mr. Tony Ziegler.

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ANTON J. ZIEGLER

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name, please?

The Witness: Anton J. Ziegler.

By Mr. McRoberts:

Q. What is your business or occupation, Mr. Ziegler? [114]

A. Secretary of Local Union 896, Branches 3 and 4, Los Angeles.

Q. Of what is that a labor organization?

A. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.

Q. Does your organization represent a majority of the employees in the bottling department of the defendant brewery?      A. Yes, sir.

Q. And has it so represented a majority of such employees since July 28th of last year?

A. That's right.

Q. Now, prior to the date I have last mentioned, were you an officer of Local Union 293,

(Testimony of Anton J. Ziegler.)

Branch 3, of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America? A. That's right.

Q. In what official capacity were you connected with that organization?

A. Secretary of Local 293, Branches 3 and 4, of the International Brewery Workers of America.

Q. That is the organization which I have just referred to? A. That's right.

Q. For what period of time and over what term did you [115] act as secretary for this last-mentioned labor union? A. From the year 1937.

Mr. McRoberts: Now may I have Plaintiff's Exhibit 2 again, please?

(The document was handed to counsel.)

Q. By Mr. McRoberts: Are you familiar with the practice of adopting and following so-called working rules, followed by the defendant brewery from the year 1936 to 1946? A. Yes, sir, I am.

Q. Were the provisions of those working rules, as they might appear from time to time, lived up to and recognized by the defendant brewery?

A. That's right.

Q. And were approved by you?

A. That's correct.

Q. During the time you have mentioned, from 1936 to July 28, 1946, which last date is the date of the contract pleaded by the defendant, were the provisions of Section 1 (b) of Plaintiff's Exhibit 2, being the working rules I have referred to, recog-

(Testimony of Anton J. Ziegler.)

nized and lived up to by the defendant brewery, which I quote:

“Only members in good standing who are members of Bottlers Local Union No. 293 of the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America shall be employed as bottlers in the bottling [116] department at the brewery, including all basements, platforms, storage, and yards used in connection with the operation of the bottling department in positions where bottlers are now employed, or in those branches where employer may require the employment of a steady crew to perform bottlers’ work.”

Were those provisions enforced at the brewery in the years I have designated, from 1937 to 1946?

A. Yes, that’s right.

Q. And did the defendant brewery hire all its bottlers through the union?

A. Through the union.

Q. Will you state to the court the procedure followed by the brewery when it required new bottlers or additions to its crew?

A. When the superintendent in the bottling plant or in the warehouse required help, they would call our office, give us the starting time and the number of men required. We would then call men that were on our list, have them come down to our



(Testimony of Anton J. Ziegler.)

office, and write out a clearance slip for them, which would be presented to the shop steward in the plant.

Q. Did the brewery have any control over the employment of these men?

A. No, they did not.

Q. Do they at this time? [117] A. No.

Q. Now, in the year, July 28, 1946, did you become affiliated with Local Union No. 898, I believe it is—isn't it? A. 896.

Q. 896. And did a majority of the employees in the bottling plant of the defendant brewery join your organization?

A. Yes, they did. We presented the employers with approximately 90 per cent of signed designation cards.

Q. Was that likewise done by the brewing department and the delivery department?

A. With all departments, as I recollect. I sat in the negotiations, and the cards were checked.

Q. It was based upon those cards that you made the demand for the contract of July 28th?

A. That's right.

Q. Are you familiar with the construction of Joint Local Executive Board of California, one of the signatories to the contract, Exhibit "A" attached to defendant's answer?

A. Yes, the Joint Local Executive Board of California is made up of the various local unions in the brewery industry in the State of California.

Q. It is a labor union?

A. Composed of all labor unions. [118]

(Testimony of Anton J. Ziegler.)

Q. That includes the bottling, the brewing, the packing, and delivery departments?

A. That's right.

Q. I show you what purports to be a form of designation card, and ask you if that is the type of card that was signed by the company's employees in the described departments, and presented to you, upon which you based your demands that we sign the contract I referred to.

A. That's right.

Mr. McRoberts: We offer this, your Honor, in evidence as Defendant's Exhibit I, or such other designation——

The Clerk: Defendant's Exhibit A.

The Court: So ordered.

(The document referred to was marked Defendant's Exhibit A, and was received in evidence.)

Q. By Mr. McRoberts: Mr. Ziegler, are you acquainted with Mr. Dobbs and Mr. Ullrich, who testified here in court this morning?

A. Yes, I am.

Q. How long have you known them?

A. Well, I have known Walter Ullrich from the date that he stated he was employed by the Los Angeles Brewing.

Q. Directing your attention to in September of 1946, did you at that time have a conversation with Mr. Dobbs and/or Mr. Ullrich concerning their continued employment at the Los [119] Angeles Brewing Company?

(Testimony of Anton J. Ziegler.)

A. The only conversation in September that I had with them was after they refused to go through that picket line, as of September 23rd. It was two or three days afterward. They, with a group of others, refused to go through, and came down to the office. Some of them had C.I.O. buttons on, and asked if they could go back to work.

Q. Including Mr. Dobbs and Mr. Ullrich?

A. Well, I know Mr. Ullrich was there. I can't recall whether Dobbs was there or not. And they were told at that time, if they would transfer to our organization, we would put them back to work, but that they had gone out on strike, and until they had transferred their affiliations, why, we would not clear them through the union.

Q. Did you offer Mr. Ullrich a clearance or a right to join your organization? Did you offer him membership?

A. Yes, sir. He had that right ever since July 23rd.

Q. And you told him of that?

A. That's correct.

Q. What did he say?

A. He refused to join it. They all had one man as a spokesman, Fritz Huessler, and he made the statement, "We want to go back to work under the same union we left there."

Q. And what was your response to that?

A. "I am sorry. We can't do anything for you."

Q. To your knowledge, has the National Labor

(Testimony of Anton J. Ziegler.)

Relations Board conducted an election in the various breweries, including the defendant brewery, since September of last year, to determine the number represented?      A. Yes, they have.

Q. Are you familiar with the outcome of that election?      A. Yes, I am familiar with it.

Q. Would you state the results, that is, the vote results?

A. I would have to look at notes I have in my pocket on that.

Mr. McCall: I suggest you make that an exhibit, and I will agree that that is it.

Mr. McRoberts: We have stipulated, your Honor please, that we may introduce the document on the letterhead, "United States of America, National Labor Relations Board. In the Matter of Acme Brewing Company," and so forth, including the defendant here named, which purports to be a tally of ballots, signed by Martin Zimring, whose signature I happen to know and I can verify, because it was signed in my presence, showing the union, represented by the Joint Local Executive Board of California, and Mr. Ziegler, and Mr. Schaffer, and others, received 817 votes, and that the International Union of United Brewery, Flour, Cereal and Soft Drink Workers of America received 182 votes. We offer that in evidence as [121] defendant's next in order.

The Clerk: Defendant's Exhibit B.

The Court: So ordered.

(The document referred to was marked De-

(Testimony of Anton J. Ziegler.)

pendant's Exhibit B, and was received in evidence.)

Mr. McRoberts: That is all. Cross-examine.

Cross-Examination

By Mr. McCall:

Q. Mr. Ziegler, where was the vote taken in July—in May, or at any time prior thereto, as to the joining of the Teamsters Union?

Mr. McRoberts: Are we attacking this contract, your Honor, if we may use the word “we” advisedly in these proceedings?

The Court: I don't know whether you are or not. Overruled, if that is the objection.

Mr. McRoberts: That is the objection, your Honor.

The Court: Objection overruled.

The Witness: Would you repeat the question?

Q. By Mr. McCall: Somebody has mentioned that there was a vote somewhere, that some members voted to join the Teamsters. Where was the vote taken, and what are you talking about?

A. Well, to clarify that question, that covers quite a lot. There never was a vote taken to join the Teamsters. [122] There was a vote taken in the International Union in April, 1946.

Q. The International Union of Brewery Workers?

A. Of Brewery Workers, by a conference in Cincinnati, which voted by a very small minority to have an election whether to affiliate with the C.I.O.

(Testimony of Anton J. Ziegler.)

or not, as our International Union was suspended and had been independent since 1941. And at that time the vote was taken. It was a referendum vote. The State of California voted nine to one, or Los Angeles did, rather, nine to one not to affiliate with the C.I.O. Then at a later date we find that by a small majority our International Union was going to affiliate with the C.I.O. Our people in the State of California knew that there would be nothing but strife and chaos in the brewing industry if we went with the C.I.O., so, consequently, there was a meeting and these things were discussed, and through the designation cards in the month of July we affiliated with the A. F. of L.

Q. Yes. In other words, there was no vote taken about joining the A. F. of L.?

A. Yes, there was a voice vote, that on several meetings the men empowered their officers to make whatever arrangements they could to get back into the ranks of the A. F. of L.

Q. Did that mean abandoning and sabotaging or quitting the International Brewery Workers? [123]

A. I don't know what you mean by "sabotaging."

Q. Well, these unions, or, the union of which you were formerly secretary never joined the Teamsters, did it?

A. How is that?

Q. The International Brewery Workers Union, of which you were formerly secretary——

A. Yes.



(Testimony of Anton J. Ziegler.)

Q. —that organization never joined the Teamsters, did it? A. To my knowledge, no.

Q. All right, sir. That is all I want to know.

Now, as a matter of fact, there was never any vote taken to determine who had the majority of the membership out there in any of these plants until this one the other day—on March 27th, was it?

Mr. McRoberts: Your Honor please, the designation cards are in evidence as Defendant's Exhibit A.

The Court: Read the question, please.

(The question was read.)

The Court: "This one"—what do you mean? The one that is indicated by Exhibit B?

Mr. McCall: Yes, sir.

The Court: Overruled.

Have you got the question?

The Witness: Yes, your Honor. The designation cards [124] showed us the way our men wanted to go.

Q. By Mr. McCall: Well, you had some designation cards—I mean, vote taken of the whole place?

A. Designation cards were taken throughout the State of California.

Q. Now, the date on those designation cards was that they were made and being gathered up on June 26, 1946? A. June what?

Q. June 26th. Up in June; that is correct, isn't it?

(Testimony of Anton J. Ziegler.)

A. Well, probably these were signed on June 26th——

Q. Yes, sir.

A. ——and others were signed earlier than that.

Q. I see. And the last sentence of this——

A. No, not June. No, I would say July.

Q. I will ask you if that is the date, “June,” right there (indicating).

A. That is June.

Q. And you have already referred to it as a contract dated July, 1948; isn't that correct?

A. That (indicating) would be a rubber-stamp date.

The Court: Just a moment. You are getting ahead of yourself. You said “1948.”

Mr. McCall: 1946, your Honor. Excuse me, sir.

Q. By Mr. McCall: Now, all the authorizations you have exhibited bear the date of the authorization in June? [125]

A. These three copies, yes.

Q. Yes, June 26, 1946. And referring to the last sentence of these authorizations, it is this: “I subscribe to that certain agreement with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, dated July, 1946.” That is what it says?

A. That is correct.

Q. Then I ask you, is it not a fact that before July, before any Teamsters Local Union was formed, it was known by the men you were circu-

(Testimony of Anton J. Ziegler.)

lating these papers and that there was going to be a contract with the Teamsters in July?

Mr. McRoberts: Just a minute. Your Honor please, may I ask counsel again, and I would like to have some assistance on this point: Are you attacking this contract that I have pleaded?

Mr. McCall: No, I am not.

Mr. McRoberts: Then I object to this question as not probative of any of the issues in this case. When the men signed the contract or when they didn't is not material to it.

The Court: I don't see the relevancy of it, but there may be some relevancy. It is rather obscure, but I will permit it to be elicited. Overruled.

Now, read the question.

(The question was read.)

The Witness: To my knowledge, all of this happened in [126] July.

Q. By Mr. McCall: Do you have any explanation to give as to how each one of these bears the date of June 26th?

A. Unfortunately there was only three represented there. I think if you will check the 90 per cent that were presented to the employers, those were in handwriting. Those happened to be with a rubber stamp. If you will check those in handwriting, I think that you will find the dates of the majority of them are in July, instead of June.

Q. Were any of these authorizations circulated amongst the veterans who were absent in the Army,

(Testimony of Anton J. Ziegler.)

in the armed forces—those that had not returned and gone to work?      A. No.

Q. They were not?      A. No.

Q. How many men—

A. Excuse me. Now, I didn't quite get that other question.

Q. Were any of these authorizations circulated amongst the men who were in the armed forces?

A. And the ones that have returned? I though you meant that.

Q. And had not returned.

A. No, they didn't.

Q. They were contacted only if they were then working [127] in the various breweries?

A. That is correct.

Q. Mr. Ziegler, Mr. Ullrich has testified that you told him at the time that they came down there to see you, to get clearance to go back to work, that you told them they were through at Eastside. Did you tell them that?

A. To my knowledge, I don't recollect that. It was stated they would have to clear. I didn't make no assertion as to Eastside, or any place, but that they would have to come over into our organization.

Q. Now, did you offer them or show them some application blanks there?

A. Absolutely. They were offered to them, and they refused to sign them.

Q. Did you tell them that they could sign them, but that that wouldn't mean they would go back to Eastside?

(Testimony of Anton J. Ziegler.)

A. No, I didn't make that statement.

Q. Did you consider it clearing them for East-side, to take their former seniority there?

A. I think our records will show that any veterans that has signed any of our designation cards, have gone back to their jobs and have had no trouble, except with those who refused to go through the picket line. They have all been in the jobs, and we have had no dispute in the bottling industry except those with the union that were affiliated with and [128] formed the picket line and refused to go through.

Q. In this conversation we are talking about, though, I believe your testimony is now that no brewery was named nor place where they could work if they signed?

A. To begin with, I think Mr. Ullrich made the statement here that Mr. Huessler done the talking, and Mr. Heussler was doing the talking. As I recollect, they were offered a card to sign. There was no discussion of "We are going back to work," or anything else. We told him they would have to sign the card before we could talk work with them any place.

Q. They would have to sign the card before you could talk work with them any place?

A. That's right.

Q. Later on, did you receive a call from Mr. Hoff on a Saturday; Saturday, October 5th, while these men were there talking to him?

(Testimony of Anton J. Ziegler.)

A. I don't recall. That is a long time ago, and we have a hundred telephone calls a day that come into that office.

Mr. McCall: You don't recall. All right, that's all.

Mr. McRoberts: That is all, Mr. Ziegler.

(Witness excused.)

Mr. McRoberts: Mr. Hoff. [129]

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JOHN G. HOFF,

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name, please?

The Witness: John G. Hoff, H-o-f-f.

Mr. McRoberts: For the benefit of counsel, Mr. Hoff is slightly hard of hearing.

By Mr. McRoberts:

Q. Mr. Hoff, would you state your business or occupation, please?

A. Superintendent of the bottling department, Los Angeles Brewing Company.

Q. How long have you held that position?

A. Twelve years.

Q. Twelve years? A. Twelve years.

Q. Are you acquainted with Mr. Dobbs and Mr. Ullrich? A. I am.



(Testimony of John G. Hoff.)

Q. Were they formerly employed by you?

A. They were.

Q. By the way, from what source do you procure your bottlers? I will withdraw the question.

Since July 28th of last year, from what source have you procured your bottlers? [130]

A. Procured them?

Q. Yes. A. Through the Local Union.

Q. Through Mr. Ziegler, who just preceded you on the stand? A. That's right.

Q. Before that time, you likewise procured your bottling employees through Mr. Ziegler?

A. Through Mr. Ziegler.

Q. Now, directing your attention to September 23rd of 1946, did Mr. Dobbs and Mr. Ullrich report for work on that morning?

A. Not on the morning of the 23rd.

Q. Do you know why they did not?

A. Not exactly, no.

Q. When did you first see Mr. Ullrich or Mr. Dobbs following the 23rd?

A. It was either the following Wednesday or Thursday. I am not sure of the time.

Q. The following Wednesday or Thursday. Did you at that time have a talk with them?

A. There was a group of about nine came in to see me and asked me if they could go back to work.

Q. And what did you tell them?

A. I told them, well—first of all they asked me if [131] they were fired. And I asked them,

(Testimony of John G. Hoff.)

“Why?” And they said so they could make application for unemployment. That was just some of them; not all of them. And afterwards they asked me if they could go back to work, and I told them they would have to go to the Local Union and get an application or permit, and then come to me and I would put them back to work.

Q. You had fired Mr. Ullrich and Mr. Dobbs previously, on the 23rd, by notifying Mr. Ziegler to send you more men; is that correct?

A. That's right.

Q. And on the 23rd there was a picket line maintained around the brewery by various members of the C.I.O.; is that correct? Or, at least, by the International Union of Brewery Workers?

A. It started on the morning of the 23rd.

Q. Now, did you have a subsequent conversation with Mr. Dobbs or Mr. Ullrich concerning their re-instatement or re-employment, or again taking up their work with the brewery?

A. The following Saturday of that week, the week of the 23rd, Mr. Dobbs and Mr. Ullrich and Mr. Busick, they came to see me, about, I think it was around 10:00 o'clock in the morning, and told me they would like to report for work Monday morning. And I told them the same thing I had told them on Wednesday, that they would have to go down to the Union Local and get a clearance, and come back and I would put [132] them to work.

Mr. McRoberts: That is all.

(Testimony of John G. Hoff.)

Cross-Examination

By Mr. McCall:

Q. Did you call anyone up at that time?

A. Pardon?

Q. Did you call anyone up at that time?

A. Yes. On Saturday morning, when they came back the second time, I told them there was nothing I could do, that they would have to get clearance through the union to go to work. They asked if I would call, and I called, and Mr. Fowler answered the telephone there, and he told me to tell them to come down and see them.

Q. What did you tell the men?

A. I told the men to go down and see Mr. Ziegler. Mr. Fowler, I think, is his assistant; an assistant to Mr. Ziegler.

Q. Mr. Hoff, did they report to you that they had been down to see Mr. Ziegler?

A. I don't know whether they went down to see Mr. Ziegler.

Q. Didn't they tell you they had been down to see Mr. Ziegler, and his response was that there was nothing he could do about it?

A. Yes, sir.

Q. Didn't they tell you they had been to Mr. Ziegler, [133] and that that prompted you to say, "Then there isn't anything I could do for you"?

A. I didn't—

Q. I wonder if you understood from them, or did they tell you on Saturday morning, October 5th,

(Testimony of John G. Hoff.)

that they had been to see Mr. Ziegler and they couldn't get cleared?

A. They told me they were down to the local. They didn't tell me who they saw.

Q. But they told you they had been down there, and they told you they couldn't be cleared?

A. No, they asked me to go back to work on Monday. That was on Saturday. When they asked me to go back to work on Monday, I asked them if they had been down to the local on Wednesday. They said they were. I told them I couldn't put them back to work until they had a clearance from the union, and that is when I called up for them.

Q. You called up, and nothing was said then about going back to work, or what was said about that? What did you say to them after you came out from the telephone?

A. When I called up the local, Mr. Fowler told me to tell them to come down and see them down at their local. So I told Mr. Ullrich, Dobbs and Busick to go down to the local again, that Mr. Fowler wanted to see them down there, and then they left and come back no more.

Q. How long did the picket line stay out there?

A. How long did they stay there?

Q. Yes.

A. From September 23rd until March 26th, I think, or 25th. Now, I am not sure of that date, but I think it was the 25th or 26th of March.

Q. Then the election was held on the 27th?

(Testimony of John G. Hoff.)

A. On the 27th, that's right. There was no picket line on the day of the election.

Mr. McCall: I believe that is all.

Mr. McRoberts: That is all. You may be excused, Mr. Hoff.

Do you wish his attendance in court, your Honor, or counsel?

The Court: No.

Mr. McCall: No.

(Witness excused.)

Mr. McRoberts: The defendant rests.

The Court: We will take a recess for about five minutes.

(A short recess.)

The Court: Proceed, gentlemen.

Mr. McRoberts: I have rested, your Honor.

Mr. McCall: Mr. Dobbs, will you take the stand, please. [135]

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SAMUEL M. DOBBS,

called as a witness by and on behalf of petitioners, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Clerk: Will you state your name, please?

The Witness: Samuel M. Dobbs, D-o-b-b-s.

By Mr. McCall:

Q. Mr. Dobbs, you are a petitioner in this case?



(Testimony of Samuel M. Dobbs.)

A. Yes, sir.

Q. And it was stipulated this morning that you would testify the same as Mr. Ullrich?

A. That's right.

Q. So that obviated the necessity, then, of having you on the stand. I will ask you, though, if you were present on October 5th, when Mr. Ullrich returned to the plant of the Los Angeles Brewing Company and saw Mr. Hoff.

A. I was.

Q. Did Mr. Hoff at that time say anything to you men about going back to see Mr. Ziegler or Mr. Fowler at the Bottlers Union or the Teamsters?

A. No, sir.

Q. Now, state to the court, in brief, what did take place at that conversation.

A. Mr. Hoff said——

Q. Speak loud so that the Judge can hear you.

A. Mr. Hoff said that he would just as soon take the three of us back to work, but that his hands were tied, that he couldn't do anything about it, but he would call up and find out. So he went in to the phone in the guards' booth outside of the brewery there, and he come back in a few minutes and he said, no, that he couldn't do anything about it, that he couldn't take us back to work.

Mr. McCall: That is all.

Mr. McRoberts: No questions.

Mr. McCall: Step down.

(Witness excused.)

Mr. McCall: Mr. Ullrich.



## WALTER F. ULLRICH,

recalled as a witness by and on behalf of petitioners, having been previously duly sworn, was examined and testified further as follows:

## Direct Examination

By Mr. McCall:

Q. Mr. Ullrich, prior to the trip that you made to the Los Angeles Brewing Company plant on the morning of October 5, 1946, did you confer with Mr. Koenig of the Selective Service System?

A. Yes.

Q. Did you return to the plant that morning upon his instructions? [137]

A. Yes.

Q. When? A. October the 5th.

Q. Now, in that conversation that you had with Mr. Hoff that morning, did he tell you or indicate to you that you men should go back to the Teamsters or Bottlers Union for clearance, or other effort?

A. No, not at that time. He said that he had orders that he couldn't hire us and put us back to work.

Q. He had previously, in the previous conversation you had with him on the previous Wednesday—

A. No, that was the 30th that he told us to go down to see Ziegler.

Q. The 30th was on Monday?

A. That's right.

Q. And you asked him then to go to work, and he told you to see Ziegler?

A. Yes, sir.

(Testimony of Walter F. Ullrich.)

Q. But on the following Saturday, after you had been down to see Mr. Ziegler, you returned on instructions of Mr. Koenig to see Mr. Hoff, and did he at that time tell you to go back to see Mr. Ziegler or Mr. Fowler?

A. No, not at that time. He just simply said he had orders not to put us back, and he made a phone call at that time, and he said he was sorry, that he couldn't do anything [138] for us.

Q. And that is all? A. That is all.

Mr. McCall: I believe that is all.

Mr. McRoberts: That is all.

The Court: Whom did he call up, Mr. Ullrich, do you know?

The Witness: Well, that is something that I don't exactly know, whether he called Mr. Ziegler or Mr. Lick. I don't know who he called at that time. He didn't say. He just simply come out and said, "I'm sorry, I have orders not to return you to work."

The Court: He didn't call that person in your presence?

The Witness: No. We were talking to him out in front of a little gate, and he went in the front there, where they have the phone in the office.

The Court: Is that when he said that he was sorry?

The Witness: At that visit. That was the last time I was over there.

The Court: That was all there was to it, was it? There was nothing else after that?

(Testimony of Walter F. Ullrich.)

The Witness: No, not after that. There wasn't much said, no.

The Court: Why did you go down to see Mr. Ziegler? What was the idea of going down to see Mr. Ziegler? [139]

The Witness: When?

The Court: Why?

The Witness: That was the visit we had with Mr. Hoff on the 30th of September. He said we had to go down to see Mr. Ziegler to get a clearance from the union so we could go back to work.

The Court: It wasn't the brewery, then, that had the say as to whether you could go back to work, was it?

The Witness: Well, in this particular time we went to see Mr. Hoff, why, we had to go to see the secretary of the Teamsters, which was Mr. Ziegler.

The Court: In other words, the brewery could not put you to work until the union said something?

The Witness: Yes, sir.

The Court: And the union didn't say so, and, therefore, you didn't go?

The Witness: Yes, sir.

The Court: That is about the size of it, isn't it?

The Witness: That's right.

The Court: I suppose that you could have gone to work if you had signed up?

The Witness: Well, I don't know how things

(Testimony of Walter F. Ullrich.)

would have worked out that way. I was in good standing when I left for the service, and we had good conditions. We were making good money, and that is the same conditions we had at that time, so I didn't know why I should sign for another organization. This one had represented me since 1934.

The Court: I don't know, either, except there was a contract there to which the Brewing Company had agreed.

The Witness: Well, I guess that is something that went on more or less while we were away.

The Court: Yes, I understand.

Mr. McCall: That is all.

The Court: That is all.

(Witness excused.)

Mr. McCall: Mr. Koenig, will you please take the stand.

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V. H. KOENIG

recalled as a witness by and on behalf of petitioners, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. McCall:

Q. Mr. Koenig, did you have a report from Mr. Ullrich or Mr. Dobbs on October 5, 1946, after they had been to see Mr. Hoff?

(Testimony of V. H. Koenig.)

Mr. McRoberts: Just a moment, please. For the purpose of the record, Mr. Koenig is not an employee of the defendant. He is not in an administrative capacity for the Government or for any agency having jurisdiction over labor matters.

The Court: It is a part of the chain of proof. I think [141] the record should be complete as to just what these proceedings were, in the efforts of these men to get a job in the face of labor union objection. Overruled.

The Witness: I couldn't say. If October 5th was on Saturday, I didn't hear from them on Saturday, but I did hear from them after they had gone back to the Eastside Brewing Company or the Los Angeles Brewing Company.

Q. (By Mr. McCall): You had advised them to go back to see Mr. Hoff, had you?

A. Yes. You understand, Mr. McCall, that was the culmination of a dozen different meetings that were held with different union and brewery officials, and there was nothing, apparently, further to be done, and I instructed them to go over and make a formal demand for their position. And I called Mr. Lick beforehand and told him I was sending them down, and asked them to report to me, which they did. And after they reported to me, I called Mr. Lick and had a telephone conversation with him.

Q. What was that conversation?

A. I said to him, "These boys I sent over report to me you won't put them back to work without

(Testimony of V. H. Koenig.)

them having a clearance from the Teamsters Union, and the Teamsters Union won't give them the clearance." I said, "I sent them over so that they would specifically make the demand. I don't want to proceed further with the matter if there is any misunderstanding [142] as to what occurred at your place."

And he told me, "No, there is no misunderstanding. We refuse to re-employ them unless they hold clearances from the Teamsters Union."

I then told him he was faced with a liability for compensating them for loss of wages. He said he understood that.

Mr. McCall: That is all.

Mr. McRoberts: That is all.

The Court: Was there anything done after that, Mr. Koenig, in the way of their going back to work at all?

The Witness: No, that was my final, closing conversation and posting my file to the United States Attorney's office. There had been, of course, prior to that, much negotiation.

The Court: In other words, the attitude of the employer throughout was, wasn't it, that in the absence of this union agreement the employer never asserted any claim that he wouldn't re-employ these veterans?

The Witness: Are you limiting it to the Los Angeles Brewing Company?

The Court: I am speaking about these three



(Testimony of V. H. Koenig.)

gentlemen here.

The Witness: Yes, limiting it to the Los Angeles Brewing Company, I would say no.

The Court: Why would you say no?

The Witness: There were other brewers involved in other [143] cases, involved in these series of negotiations.

The Court: I am not speaking of those. I am speaking of these three veterans.

The Witness: I understood your question——

The Court: Wait a moment. I want you to understand it, and if you don't, you can tell me and I will clarify it. I want you to thoroughly understand it.

As to these three veterans who are asking for their positions, at any time did the brewery—I am not speaking about union representatives; I am speaking about the brewery—refuse, as distinguished from union representatives, or at any time manifest or say or indicate that if it were not for this contract, or, that because of this contract they weren't able to employ the men, and wasn't that the sole reason which they gave for not taking them back?

The Witness: Every time but once.

The Court: Which one was that?

The Witness: That was—if I may have my notes here, I can give you the date of my conversation with Mr. Lick. On October 31st I called Mr. Lick and left a message. November 1st—he called me

(Testimony of V. H. Koenig.)

back November 1, 1946, and he told me that relative to Iob he had forgotten to tell me in the previous conversation that he had been discharged because his work was unsatisfactory.

I told Mr. Lick that was an amazing statement to make at [144] this time, after the previous meetings we had had with him and with officials of the brewery, in which that had never been raised or never even suggested, and it was entirely new; and, further, that in view of the construction placed by the courts on the obligation of employers, that I didn't think that eight days work was a fair trial to determine whether or not the man was capable of performing his work or to draw a conclusion as to his work being unsatisfactory.

And then Mr. Lick stated to me: I guess there was only one thing for him to do, and that was to put the veteran back to work.

The Court: He did put him back to work, didn't he?

The Witness: On November 6th, yes.

The Court: He did put him back to work?

The Witness: Yes. That one statement was made on that one occasion.

The Court: So that, so far as that statement is concerned, he retracted from that and put him back to work?

The Witness: That's right.

The Court: Then the only reason following that why he couldn't continue in the work was because the union balked it; was that it?

The Witness: That is correct. [145]

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The Court: Now, where is the reasonableness of issuing an edict or an injunction to the brewery, not to the union? I agree with you that we ought to be able to, but we haven't the power. That is the power of the National Labor Relations Board.

Mr. McCall: Here, your Honor——

The Court: Wait a moment. You want to do all of the talking and not any of the listening. I would agree with you if we could issue an injunction to require the unions to settle their differences so that the men that desired to could go to work. That is the situation in which we would like to find ourselves, but we have to take the conditions which the case presents, and that is this: Here are three good workmen who are union men, who were union men in that brewery, and who went into the military service, who got an honorable discharge, and who come back and go to the brewery and ask for their jobs, and the brewery says, "Why, yes, we are glad to have you here." The impasse they meet is not with the brewery. It is with a labor union organization that says, "No, you cannot work here unless you belong to our crowd."

Where is the unreasonableness of saying to the employer, "Well, we cannot help that. You just have to take care of [160] that yourselves. We are going to issue an injunction and put these men back to work."

When that is done, do you suppose there is going to be peace and concord and a nice relationship?

Mr. McCall: There will be.

The Court: Then why didn't you settle the case, if that is the situation?

Mr. McCall: Because, your Honor, these men want a determination as to whether or not it is the right of a veteran to go back to work.

The Court: They have that.

Mr. McCall: If your Honor will rule that way, the rest of this case will be over.

The Court: How are you going to enforce it? You cannot rule without enforcing your ruling.

Mr. McCall: The unions will not go out on strike.

The Court: They have not appeared here, of course, excepting that the evidence shows the attitude of the union that has the collective bargaining agreement here. It was the attitude of those men who testified here representing the group that had the collective bargaining agreement that they opposed these men remaining on the job. They were put back on the job, or one of them worked there for a while.

Mr. McCall: All three of them.

The Court: Then the union interposes itself; not the [161] employer. What is the employer going to do, where he has these two discordant, dissident organizations of union workers? You are going to have continuous chaos, strife, and nobody working, and eventually the factory is closed down

because there is nobody working. If you can get these people together, I will give you a continuance here. You seem to think you can.

Mr. McCall: No, your Honor, it will not do any good. They are taking the position that it is their legal right to demand that these men not work. That is the union's position, that it is our legal right to demand that they do not work.

The Court: We will make a finding in this case—I will hear from the other side, but I think the Court will make a finding that these veterans have a legal right to work in that brewery, but I don't know how we are going to enforce that right, and I am not going to issue an injunction which will be ineffectual.

Mr. McCall: If your Honor will rule that way, I will state to your Honor that that will be the end of this case.

The Court: I will hear from the other side before I make that ruling. You mean you will not ask that the Court issue a mandatory injunction?

Mr. McCall: Not at this time. But if your Honor will find that is their right it will put an end to this litigation, because I know that the union will not undertake a [162] violation and go against that by calling any strike, and there isn't going to be any interference with the work there.

The Court: I am confident that you feel that way, but you are not controlling these labor unions.

Mr. McCall: No, sir, but I have dealt with enough of them to know that the labor unions will not do that.

The Court: The Court is with you on this phase of the case, Mr. McCall: There is not a thing that would justify this Court in declining to make a finding or to draw a conclusion that these three veterans are entitled to their jobs back in the Los Angeles Brewing Company; not one scintilla of evidence that would justify it excepting that one phase of the case, in which the objection is interposed to them, not by the man that wants to pay them their wages or to give them back the jobs which they had, but by a group of labor union organizations who say, "Unless you sign up with our union, you cannot get a job."

The Court is with you to that extent. The Court is not with you to this extent, and will not do it, because it would create trouble, discord, confusion, and ultimate chaos in that business, which would result not only in the business itself having to go out of activity, but every man in the place losing his job: it will not issue an injunction because under Section 8 of the Act it considers that the issuance of a mandatory injunction under those conditions is an [163] unreasonable and unjustifiable act.

Mr. McCall: If your Honor will find that these men were entitled to their jobs, without any order carrying it into effect at this time, I will talk with the Teamsters Local, and I can assure your Honor now that they will not call any strike about it.

The Court: Let's hear from the other side. What do you have to say about it?



Mr. McRoberts: Your Honor please, much as I regret to doubt Mr. McCall, I doubt very much whether he can speak for the Congress of Industrial Organizations. The evidence so far has been contradictory to it. I feel that there will be strikes, boycotting, and other things. We have had continuous labor disputes since last September and until this election was held. So far as the finding that the veterans are entitled to their jobs as veterans, that is one thing, but if it is determined that they are entitled to their jobs as a matter of right, then we invade the province of the N.L.R.B., because the N.L.R.B. has said that the bargaining agent is the Joint Local Executive Board of California, with whom we have contract, and the election has been held and it has been determined to be the collective bargaining agent.

The Court: I am not at all concerned about the function of the National Labor Relations Board as a judicial prerogative. Those are two different matters, in my judgment. [164]

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The Court: I want you to understand, both of you, that the Court's attitude is to accomplish something effectively for these veterans, if it can be done within the framework of the law. I cannot see how the Court has any power to issue an injunction, a mandatory injunction, to require the defendant brewing company to reinstate these men, because I think it would be an unreasonable attitude, and I apprehend that the consequences that would ensue by such an injunction would be more disastrous to

the workers, all of them, including the veterans, than to deal with the case otherwise. If you feel that you can get these discordant, dissident labor union organizations together and agree upon reinstating these men with the finding that if it were not for the labor union activities the injunction should issue to reinstate them, I will be very glad to continue the case to permit you to do it.

Mr. McCall: If your Honor please, where two labor unions have been out fighting each other for years, now eleven or twelve years, I don't think that I can assure you that I can settle that dispute, the general dispute, but what I do say to your Honor, and I am confident of this fact, is [171] that if your Honor will rule that the Selective Training and Service Act requires that these men be put back in their jobs, that there will be no strike.

The Court: How about the brewing company? Suppose a finding of that kind is made, the brewery is of the same attitude that it was during the time that they were working there, is it not?

Mr. McRoberts: Yes. We would be locked up; we would be out of business.

The Court: No, I am not asking you about that. What is the attitude of the brewing company if Mr. McCall can accomplish what he thinks he can accomplish?

Mr. McRoberts: If your Honor please, we have no attitude. It is all right with us if Mr. McCall can do it. I tried to do this very thing, that Mr. McCall says he is going to do, but I feel it cannot

be done, that the Teamsters will not allow these men to go back to work unless they are members of the Teamsters, and that we might as well face the facts about it.

The Court: There is no way by which we can, by injunction, under the facts of this case, put them back to work, because the inevitable result of the injunction would be trouble and would not get them their jobs. It would be a different situation if they would get their jobs and if the other men would continue to work and business would go on, [172] but instead of accomplishing that, nobody would get any work. I am not going to issue an injunction because the law says clearly we should not enter into a labor dispute, and I think it is a very salutary measure excepting as to these jurisdictional disputes. These national legislators would not be arguing in Washington for weeks if it was just as simple a problem as you suggest, Mr. McCall.

Mr. McCall: Would your Honor give me another moment?

The Court: Yes, certainly.

Mr. McCall: In the trial memorandum there was cited the cases of National Labor Relations Board v. Mason, National Labor Relations Board v. Electric Vacuum Cleaner Company, and also National Labor Relations Board v. The Wallace Corporation. In each one of those cases the court ordered the employer to restore certain men to their employment with back pay. There was an order of the National Labor Relations Board, and there was a jurisdic-

tional dispute, and a tussle between two unions in each one of those cases. The National Labor Relations Board heard the facts and found it was an unfair labor practice and ordered the employer to do this, that, or the other. The Ninth Circuit Court of Appeals and other Circuit Courts of Appeal entered the order or denied it, and where it was denied the Supreme Court overruled them. Now, that has been done regularly, if your Honor please, the issuing of injunctions in connection with labor disputes. The decree of this Court and its opinion as to what the rights of these men are is not a nullity and the Teamsters are not going to override it.

The Court: I think I know more about that than you do, Mr. McCall, with all due respect to your opinion, because I have sat in in many of these cases. The decree, as you term it, of the National Labor Relations Board is subject to review in the Circuit Court of Appeals, and then on certiorari to the Supreme Court, where it becomes final. That is the forum in which these proceedings should take place to conform with the present state of the law. Congress has set up this machinery. Even assuming your argument is correct as to the modified power of the Court under the Selective Training and Service Act, Section 8 of that Act, a mandatory injunction from this Court—assuming there is jurisdiction to issue it, which I doubt very seriously, with due deference to your very able presentation of it—does not have the same effect or security, as far as labor union organizations are concerned, as does the order

of the National Labor Relations Board. I think that is plain, that that Act was designed more for the protection of the worker than it was for the employer. Isn't that true?

Mr. McCall: I think that is true, your Honor.

The Court: And that the question as to what constitutes an unfair labor practice applies usually to the employer. [174] I don't know of any cases at all, and whether it could be presented I have not made a close enough study of that feature of the Act to determine it, but I don't know of any cases in which there has been presented in these jurisdictional disputes a complaint made by one union organization as against the other, but not against the employer, and it has been determined to be an unfair labor practice. If there are any such, I don't know.

Mr. McCall: No, your Honor, an unfair labor practice would be directed against the employer. That is true, but his relations with one union as against the other is the basis of those charges of unfair labor practice.

The Court: I understand that, but you get then into the realm of fiction instead of reality, just the same as you did under the "yellow dog" contract, so-called. You discuss something academically, you talk about the individual right of a man to work, and all of the other sophistical arguments used in support of the "yellow dog" contract, so-called. Now, it is collective bargaining that has brought about these benefits, but unfortunately and unhap-



pily the collective bargaining has not been the sole criterion. These separate organizations of workers set themselves up and then they get the employer between the two so that he cannot move. If he moves one way, he has a strike. If he moves another way, he violates a collective bargaining agreement. [175]

I have told you what the court's attitude is. If you think you can get them together, I will give you an opportunity to do so.

Mr. McCall: Here is what the situation is. It doesn't do me any good to go down and ask these men to do something if your Honor doesn't rule that the veterans are entitled to their jobs. If your Honor will hold that, without issuing any further order upon the facts of this case before I ask any further step be taken, and your Honor said you would not grant any injunction in the matter, then I feel I can secure from those men the agreement that they are not going to do anything about it. But I can't do anything, your Honor, unless your Honor passes on the veteran question. The question of law from there on and the relief to be given is a matter that can be framed, as your Honor says, and I can state to your Honor that there will be no further complications about it. [176]

\* \* \*

The Court: Yes, I think it is. The whole scheme of this industrial legislation has been to set up an entity into which all of the labor disputes will be brought. It is restrictive in its terms because of the necessity of bringing about a change in labor



relations, because, unhappily, as that change was wrought and as these difficulties increased, there weren't modifications of the Act to meet the changed conditions. Then these separate organizations came into being. Instead of there being one organization, there were several, particularly two major groups, which were struggling for position, and there seemed not to be the appropriate machinery in the law to meet that changed condition.

Then the war comes on and the veterans' rights are written into the Selective Training and Service Act. Section [177] 8 provides, as I have read, that where there are unreasonable or impossible conditions that have ensued, those may be a reason why the veteran cannot enforce his right to reinstatement, and that is a reasonable feature in the law. The law should not be so written that it will create an impossible situation, an unreasonable situation.

Now, what do we find in the concrete case to meet the history of the legislation as I have outlined it? We find a brewery here that was running before the war, in which these veterans were working. At that time they were members of a labor union organization of their own choosing. After their patriotic service and honorable discharge, they come back and ask for their jobs. The brewery says, "We will be glad to have you here," and gave them a job, some of them at least, and reinstated them in the work, and there is no objection made to their work. There could not be. Their efficiency apparently is

not questioned at all. There has been no evidence here to show they weren't doing a fair day's work for a reasonable wage. But a third instrumentality interposes itself, which had previously made a contract with this brewery.

Now, there is no evidence to show—and I understand what you will want to say, Mr. McCall—at least, the place to determine that question is before the Labor Board, I think, and to get an adjudication as to whether or not that is the [178] collective bargaining agency and to determine whether that contract is a valid collective bargaining agreement.

Now, what did you want to say in that connection?

Mr. McCall: I was going to say at this time, your Honor, that this contract was not entered into before these veterans returned. It was entered into afterwards.

The Court: It was while they were away fighting battles that the workers in the brewery, together with the brewery, entered into that agreement. That is very true; there is no doubt about that.

Mr. McCall: No, they were then working. They had returned and been put back on the job.

The Court: The agreement was dated in July, I believe?

Mr. McCall: And two of them had come back in April.

The Court: But I mean all of them. One came back in September.

Mr. McCall: One, yes.

Mr. McRoberts: Two of them were back at the time the contract was made, and one had returned but had not yet re-entered employment.

The Court: If there is any difference as between them, that is right. I was trying to treat the veterans on the same level. If there is any difference, I suppose the man who was away in the military service at the time of the collective bargaining agreement would be in a preferential [179] status over those who were here and could have participated in it. I was trying to see whether or not the three veterans should not be placed on the same level so far as their rights to work were concerned. When they returned, when the three of them returned, they were confronted with a situation where the employer said, "We are glad to have you here. You are good workers, there is nothing against you in your working record, and we want you here." They go to work; some of them. Then the third instrumentality, and it isn't either the employer or the worker, but just a separate, discordant, dissatisfied labor union organization, says, "Oh, no, you can't do that. If you fellows are going to work here, you have to sign up with us."

The law has recognized these collective bargaining agreements, they have the approval of the law, and they should have. There isn't anything more helpful to the working man than the collective bargaining agreement, but it is the difficulties that have been brought about by the labor union organizations that have caused the trouble in these jurisdictional disputes. It isn't a question of work. It is a question of who shall control things that creates the difficulty, and until those laws are amended the courts have to

apply the relief to the situation as they see it. I do not see that under any circumstances we can issue an injunction in this case against the defendant Los Angeles [180] Brewing Company.

The court is prepared to adopt the statements that it has made from the bench as to the findings in this case, and to deny the injunctive relief, and to hold that because of the language of the statute in subsection (b) of Section 8 of the Selective Training and Service Act, found in Section 308, Title 50 of the Appendix of the United States Code Annotated, that the injunction should not issue; and that if, in order to place the petitioners in the positions which they held at the time of their going into the military service, it is necessary that some equitable process or injunction or restraining order or mandatory edict should be issued by this court, that the circumstances shown by the evidence and the employer's circumstances, as shown by the evidence, have so changed since the workers' return as to make it impossible and unreasonable for this court to by its injunctive process place them again in their positions.

Now, if you want to adopt the findings of the court as the formal findings, you may do so. It is satisfactory to me, if it is satisfactory to both of you.

Mr. McRoberts: I will ask to have a copy of the court's remarks transcribed.

The Court: I think this is not just simply a lawsuit. This matter involves work, labor, industry, industrial relations, peace, the opportunity to do

a good day's work for a [181] fair wage, and if you feel that the court's observations as to the rights of these veterans to be restored to their jobs is helpful at all, you may state that the court feels they should be restored to their jobs. But so far as issuing any injunction is concerned, it is simply out of the question. I would feel culpable in furthering labor unrest and disturbances between laboring men, which accomplishes nothing except to furnish food to people who do not work.

If you think you can do something, Mr. McCall, and you also, Mr. McRoberts——

Mr. McCall: I don't understand, your Honor, exactly what is to be done. In other words, there would be findings and a judgment of the court.

The Court: If you can settle this matter insofar as getting these men back on the job is concerned, then I think the court could enter a judgment that during the interim they are entitled to their wages. If this was simply a question of wages, it would be a simple problem. It is not a question of wages because the year period has not yet expired. The evidence shows that these men are not able to get other employment. There has been no dispute on that, so far as the brewery is concerned. They offered no evidence to controvert that showing. They have been maintaining themselves on unemployment insurance, some of them, plus the benefits which they received from their organization on account of this cessation of work, the condition in which they find themselves. I do not feel that they should be penalized for that.



Mr. McCall: I don't understand exactly what the terms are, your Honor, or what is expected. Is your Honor undertaking now to decide the matter and dispose of it?

The Court: So far as I can at this time, yes, with the understanding that if you think you can, through the good offices of yourself and the attorney on the other side, Mr. McRoberts, and these leaders of the union that are involved, get together and settle this matter, that you do so. We want to do that if we can. The court is stepping out of its judicial orbit to see if this situation can be adjusted. Mr. McCall thinks it can be. But it is not going to be done by an injunction.

Mr. McCall: Well, if your Honor please, here is all I want, and there is nothing that I can do without it. If your Honor would find that these men were to be re-employed and were unlawfully discharged without cause——

The Court: I am not going to find that.

Mr. McCall: There is no way that I can do anything without that. If your Honor would find that, even though your Honor might not issue an injunction, I can assure you that I can go to these Teamsters officials and lay the matter before them, and say, "Now what?" [183]

The Court: You find out if they will do that, and then come into court and enter into a stipulation. I am inclined to think that you may find this the situation: that if this court should make the finding that you have suggested and that it would



not appear to be satisfactory, there might be an application made to the court, based upon its findings, for the issuance of an injunction.

\* \* \*

Mr. McCall: I don't know, but I think without a finding of a discharge without cause there would be no ability on our part to do anything.

The Court: I cannot make any such finding because they were not discharged without cause. I will make this finding, that they were discharged because of economic pressure and the enforced effective contractual mandate of the party to the so-called collective bargaining agreement. If that would help you at all, I will make that finding.

Mr. McCall: No, your Honor. I was unable, your Honor, to discuss the case of the National Labor Relations Board v. Mason; that is, the construction of whether or not a [184] closed shop contract applied to men then employed by the company.

The Court: I might say that last night I referred to the language in this case in New Jersey, and I do not see much difference here realistically between the situation that was before that court and here.

Mr. McCall: I don't know that case, your Honor.

Mr. McRoberts: That is the Chatillon case.

The Court: Kemp v. John Chatillon & Sons, decided February 7, 1947. [185]

\* \* \*

I don't know whether that is the case here or not. I do not believe there has been any evidence to indi-

cate either way, whether the results of the contract were more beneficial to the workers concerned or not.

Mr. McCall: They got a slight increase.

The Court: Then the same thing would apply here which the judge says applied in this New Jersey case. Continuing with the opinion: [188]

\* \* \*

Mr. McCall: If your Honor please, there is nothing that I can do without a finding such as I have stated, so that it is impossible to move. The only thing I can do is to get the findings in shape and the decree.

Mr. McRoberts: We will wait until the reporter can get us a transcript.

The Court: Very well. You two gentlemen may be able to use your good offices and see what you can do. Perhaps Mr. Ziegler may be able to do something towards ameliorating this condition. If you can do that, the veterans ought to be put back on the job.

Mr. Roberts: We will meet with them at any time. [190]

\* \* \*

Los Angeles, California, Thursday, June 5, 1947

10:00 A.M.

The Clerk: 6322-M Civil, Fred Elia Iob, et al., petitioners, vs. Los Angeles Brewing Company, Inc., a corporation, et al., respondents, hearing order to show cause, and so forth.

The Court: Proceed.

Mr. McCarthy: May it please the Court. My name is P. H. McCarthy, Jr. I appear specially on behalf of Brewers, Maltsters and Yeast Workers Local Union No. 893 of the International Union of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Thomas Vacca, a named respondent; and J. S. Allwine, who was served but who was not named in the pleadings at any stage.

I have not seen the Clerk's file, but unless I have been misinformed there is no return of service on file, or, if there is, it shows service on the 2nd day of June, 1947.

The Court: There does not seem to be any in the file, Mr. McCarthy.

Mr. McCarthy: I spoke to the Marshal's office by telephone from San Francisco yesterday, and the Marshal's office advised me that the only service that was made was made on the 2nd of June. Your Honor will recall that the order to show cause states that service on or before the 29th day of May will be deemed sufficient. I suggest to your Honor that the failure to make service in that time is not only a violation of the order, but also a violation of the Rules of Civil Procedure, which govern the processes of this court. [194]

\* \* \*

The Court: I think we should confine the proceeding to ascertaining whether the parties litigant or those concerning whom it is sought to make litigants are before the court.

Mr. McCall: I haven't the return, your Honor. The Marshal who has the paper will be available at 11:00 o'clock.

The Court: We will wait until he comes. So far as that is concerned, there isn't any on file, unless the Clerk has got something this morning that he hasn't filed—— [199]

The Clerk: No, your Honor.

The Court: The Clerk says there isn't anything in the file that indicates when, if at all, service was made. They are raising the point that sufficient service was not made. The only way a court can proceed, and it will proceed when that is done, is to have the parties before it. [200]

\* \* \*

The Court: Let me understand that, Mr. McCarthy, because that goes to the crux of this proceeding this morning. You [227] mean by "jurisdiction," jurisdiction of the subject-matter, do you not?

The Witness: Yes, your Honor. The court has the right to decide whether or not it has jurisdiction, and the court can obtain jurisdiction of the parties by proper process.

The Court: Why don't you appear, so that the court can determine that question of jurisdiction?

The Witness: I told counsel—I stated in open court, your Honor, that insofar as we are concerned, if an arrangement can be made for a date which will make it possible for us to prepare to argue this matter, I am satisfied my people will authorize me to appear and argue it.

The Court: Whom do you mean by your people?

The Witness: The Brewery Workers, generally. Specifically, in this action, it would have to be the particular Brewery Workers Locals that are named and the Joint Board. [228]

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P. H. McCARTHY

resumed the stand as a witness herein and, having been previously duly sworn, testified further as follows:

Direct Examination  
(Continued)

\* \* \*

By Mr. McCall:

Q. Are you appearing for Local 893?

A. Appearing specially, yes, sir.

Q. All right. When was that local chartered or organized?

A. That was originally No. 7 of the old International Union.

Q. I didn't ask you that. I asked you when was the charter for 893 issued. You can answer that.

A. No, I can't; not the way you want it answered. Local 893 is the successor of Local 7.

Q. You want to argue it. I said, when was the charter issued? What was the date? In what year?

A. By the agreement dated July 25, 1946, with the International Brotherhood of Teamsters, a charter was issued as of that date to Local 893, for the purpose of preserving its rights to——

(Testimony of P. H. McCarthy.)

Mr. McCall: I object to the rest of that as argument.

The Witness: I am sorry, it is not. [246]

Mr. McCall: I object to it as incompetent, irrelevant and immaterial.

The Witness: It is a fact, if you will read the agreement with the International Brotherhood of Teamsters, and you will see it is.

Mr. McCall: Shall we introduce the original charter?

Mr. McRoberts: I believe it is already in.

Mr. McCall: I think so.

The Witness: I didn't know that because I wasn't present.

Q. (By Mr. McCall): This Local 893 was chartered on July 23, 1946?

A. By agreement between Local 7 and the Teamsters Union.

Q. And the same is true with respect to Local 896, isn't it?           A. Yes.

Q. And the date on which this contract——

A. (Continuing): And the Distillery Workers were chartered on July 18th by the C.I.O. That is your so-called Brewery Workers Union.

Q. When was the Joint Local Executive Board formed after the issuance of these charters?

A. The Joint Local Executive Board is a part of the entire agreement, and it is not a formation, but if I recall correctly, its continuance is provided for, if I recall the [247] language of the agreement,



(Testimony of P. H. McCarthy.)

through the continuance of the Joint Local Executive Board.

Q. What was the date of that contract?

The Court: You have the two of them there now.

The Witness: One is the 28th, I believe, and the other is April 1st. [248]

\* \* \*

### WILLIAM S. SWEENEY

resumed the stand as a witness herein and, having been previously duly sworn, testified further as follows:

#### Direct Examination

(Continued)

By Mr. McCall:

Q. Do you have the returns, Mr. Sweeney?

A. I have (handing documents to counsel).

Mr. McCall: Just hand those to his Honor, please.

(The documents referred to were handed to the court.)

The Witness: I have one return non est.

The Court: That ought to be filed, too. He said he had one return non est.

Mr. McCall: Yes, sir. When you have marked those exhibits, let the court have them again, Mr. Clerk.

The Clerk: I marked Respondents' Exhibits A, B, and C, your Honor.

The Court: The returns are what I want.

(Testimony of William S. Sweeney.)

The Clerk: Oh, the returns.

The Court: That is what we are talking about. This return you have marked what, Mr. Clerk?

The Clerk: Those are filed in the case. [249]

The Court: Mark it as an exhibit.

The Clerk: Do you wish them marked?

The Court: Yes. What will they be?

The Clerk: They will be Respondents' Exhibits D, E, and F, for identification.

(The documents referred to were marked Respondents' Exhibits D, E, and F, respectively, for identification.)

The Court: On Respondents' Exhibit D, which is the first one, which purports to be a service on Thomas Vacca, president, and J. S. Allwine, secretary, of Local Union 893, there appears to be a note in handwriting, pencil handwriting.

Mr. Sweeney, will you look at that, please, and state when you first saw that appended on that instrument?

The Witness: I put it on, myself, on the date of the 2nd of June.

The Court: What were the circumstances of your placing that on there?

The Witness: The original document, or, the original summons did not contain the name of J. S. Allwine, but in making service at the brewery on Mr. Vacca, I was told that Mr. J. S. Allwine had been substituted or had taken the place of Mr.

(Testimony of William S. Sweeney.)

Elmer Schaffer, and that he was now the local secretary of that union.

The Court: Who told you that?

The Witness: Mr. Vacca. [249]

The Court: The court has reviewed the certificates.

Mr. McCall: That, I believe, is all the evidence that we have.

Q. (By the Court): When did you receive these papers for service, Mr. Sweeney?

A. Monday of this week; June the 2nd. I think, however, our office received them on Thursday of last week at about 4:30 p.m.

Q. You personally did not receive them until Monday of this week?

A. That's right; because another deputy was assigned to them, and I was away. When I returned, he was away, and they were substituted from his desk to mine.

Q. You know, however, that the instruments for service were left with the Marshal at what time?

A. 4:30 p.m., Thursday, May 29th.

Q. You did not receive them for service until the following Monday, June 2nd?

A. Myself. Another deputy had them that night, and went out and served the Los Angeles Brewing Company, but could not serve any others due to the fact that the Labor Temple had closed all their offices.

(Testimony of William S. Sweeney.)

The Court: That is all I care to examine him about. [250]

\* \* \*

The Court: The objection is overruled as to the defendants concerning whom the service appears to have been effected.

Mr. McCarthy: For the record, will your Honor specify who the defendants are?

\* \* \*

Local Union 893 of the International Brotherhood of——

Mr. McCarthy: 893 is sufficient to designate it for us, your Honor.

The Court: And Thomas Vacca, president, and J. S. [251] Allwine, secretary.

Mr. McCarthy: Of that local, or the Los Angeles branch?

The Court: Of Local Union 893.

Mr. McCarthy: When does your Honor care to hear us on the question of the motion to dismiss upon the ground that the court is without jurisdiction and upon the ground that the joinder of the parties at this time is a denial of due process in violation of the Fifth Amendment, and that the amended petition fails to state a claim upon which relief can be granted?

The Court: I will have to go to San Diego to hear a motion for a new trial tomorrow in a condemnation suit. I think we could hear you Saturday morning. [252]

\* \* \*

Mr. McCall: May it please the Court: Inasmuch as service was had upon Mr. Allwine instead of Mr. Schaffer, I would like to move that the name "J. S. Allwine" be substituted for the name "Elmer Schaffer" in the caption of the case.

The Court: So ordered. [255]

\* \* \*

(Whereupon, at 12:00 o'clock noon, Thursday, June 5, 1947, the hearing in the above-entitled matter was adjourned until Saturday, June 7, 1947, at 9:30 a.m.) [257]

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Los Angeles, California

Saturday, June 7, 1947. 9:30 A.M.

(Argument of respective counsel.)

The Court: I am not so much interested in the disputes between counsel as I am as to what they mean.

I am satisfied, on reflection and a review of these authorities, that under the proper scope of the Fishgold and Trailmobile cases, and the reasoning and logic of the statute itself, there is jurisdiction in the court. It would be a waste of time to again reiterate what the court has said about its interpretation of Section 8 of the Selective Training and Service Act of 1940. The unions are now before the court and that is the picture that should have been before the court ab initio. I tried to make that clear to counsel, that at that time to issue an injunction against the brewery defendant would be, in my judgment, an idle act, because the motivating in-

strumentality was not the brewery, it was these labor union organizations. Now they are before the court, and I apprehend that they are here—apparently their telegram indicates that they are here—with the full recognition of the power of the court to dispose of these issues.

The objection to the jurisdiction of the court on behalf of the movant defendants is overruled and denied.

If the record is sufficiently clear, and on that I am not just satisfied, I am inclined not to issue a temporary restraining [259] order in the nature of a temporary injunction mandatory against the defendant Brewing Company and prohibitory against these labor union organizations.

I shall not do that now because of Mr. McCall's suggestions that he still feels that these interested groups will recognize the position of these veterans and give them a chance to get back to work, and demonstrate whether these conjectures and observations of Mr. McCarthy will ensue. It may be that between now and sometime later those matters can be settled definitely.

The court is prepared to make the finding which it made before, and which it still feels that the record to this date justifies, that these veterans were unlawfully discharged and that they are entitled to their positions in the defendant Brewing Company. Further than that at this time I think we will not go.

Mr. McCarthy: May it please the Court: I want



to be very sure of my record in this case, because your Honor realizes, as well as I do, the seriousness of the situation. I would like formally to ask leave, as I suggested beforehand I would do if your Honor ruled as your Honor has, for an opportunity to file answering affidavits on the order to show cause. I don't want a great deal of time, but I would like certainly until the early part of next week so that I can mail them out of San Francisco possibly on Wednesday or [260] Thursday.

The Court: I will not be here. You gentlemen know the court's assignment outside of the continental United States, which becomes effective on next Thursday.

Mr. McCarthy: In view of the fact your Honor is not issuing an order at this time, I felt that would give us an opportunity to at least complete our record. Also, I would ask leave before any order is issued to be permitted to cross-examine the witnesses with respect to the testimony that has already been given, and I would like your Honor to consider and rule on that portion of our objections which raises the denial of due process under the Fifth Amendment in this respect, that, as far as I know, the order bringing the organizations into this case does not set forth the terms upon which we are required to appear. The rules say anybody may be brought in at any time, but the court shall set forth the terms which it believes to be just. That has to do with our filing of answers, our examination of the record through witnesses, and things of that sort.

Now, your Honor must realize that I am not here because I like to cause difficulties, but I have a duty to my clients to perform, and I must insist that the record stand as it should. If we are going to be required to answer within the 20 days, we will answer. Your Honor having overruled our objections, we will file a formal answer and thereafter serve [261] a formal notice of trial. Just how your Honor wants to handle it, I don't know. I don't think it need be answered now, but I think the court should give some thought, when it has the opportunity, as to how it wants to handle that matter. And I want at this time to renew our request for an opportunity within which to file counter-affidavits in respect to the amended petition and the petition. [262]

\* \* \*

The Court: Of course, if there is to be an injunction issued, Mr. McCall, you are aware of the necessities in the Ninth Circuit that there must be findings made.

Mr. McCall: Oh, yes.

The Court: I am not convinced that there is imminent necessity for the issuance of that injunction if this matter is approached properly by the interested parties. If it isn't, I propose to issue the injunction.

Mr. McCarthy: That, your Honor, I can only report to [263] those for whom I act. The decision there would be one of policy. My point concerns my duty simply as a lawyer. I would like my rec-

ord complete, and it was physically impossible for me to have completed it previously, and I would like sufficient time for me to complete it now, so that if your Honor carries out your present statement and it should be necessary so to do, why, at least I will have my record. As of today, I have nothing.

The Court: You probably could get a writ against the court, if the court tells you it will issue the injunction, which it will issue unless there is some different showing made before the court than is made at this time, and the court is not going to permit you to reopen this case and cross-examine the witnesses. That would be projecting or be attempting to project a labor issue into this case, when there isn't any, in my judgment.

Mr. McCarthy: That is a matter, your Honor, I will have to take up.

The Court: I think the situation is entirely changed now that the unions are before the court, and the processes of the court will be sufficient to reach all of the interested parties in the case. Heretofore the only party in the case was the innocent defendant in the case, and why a court of equity should reach out its arm to interfere with the business of the innocent defendant was beyond my power of comprehension. [264] Now the situation is changed. The unions are before the court, and they are the offending instrumentalities. That was the finding before, and it is the finding now. If you think you can get a writ to determine the question

of jurisdiction, and you claim it is a question of determination, I am confident you are in a good position in that respect.

Mr. McCarthy: At this stage of the proceedings I am not interested in any writ. I am interested in having on file the affidavit which will set forth the facts, many of which have been referred to here in argument, but which are not in the order to show cause before the court. I would like to have it there to complete the record. I cannot file it without your Honor's permission.

The Court: The difficulty of that is this, that you know the court's commitments as to leaving here and being absent for approximately three weeks. I told you definitely that was the assignment from the Senior Judge of the Circuit Court of Appeals on a three-judge case in Hawaii. In order to keep that appointment I shall have to leave here on Thursday, and I will not be back until—I believe the return voyage is on July 3rd, which will bring me back here about July 10th or 11th. The matter will just hang in the balance until that time, unless there is something done in the meantime.

I am hopeful, in view of Mr. McCall's very persuasive [265] suggestion that he thought this matter would be adjusted by this finding, that you will do that, and I want to permit you to do that, if you can do it. But there ought to be something done in the way of movement here. Either get a writ against the court, and if the court hasn't any juris-

diction the Circuit Court of Appeals can issue its writ to prohibit any injunction, or——

Mr. McCarthy: I have no record, your Honor, on which I could apply for a writ unless I am permitted to file affidavits. Unless I do that, I won't have a record.

The Court: I am inclined to give you a day or two to file affidavits, but I am not going to give you any extended time.

Mr. McCarthy: I don't want any extended time, your Honor.

The Court: When can you file your affidavits?

Mr. McCarthy: I can file them on Tuesday. The situation is this: I will be in my office Monday, and I can bring them with me to San Diego and can file them with the Clerk in San Diego, and transmit a copy by air mail special delivery, so that it will reach here on Tuesday.

The Court: If you want to file any counter-affidavit, you can file it provided it is here by Tuesday morning.

Mr. McCarthy: Thank you, your Honor.

The Court: The court will not, until that affidavit is [266] here, issue any injunction. Upon the reading of that affidavit, and if the petitioners make a further motion and the affidavit does not remove from its mind the conclusion which the court has indicated, upon an application by the petitioners I shall issue an injunction.

Mr. McCarthy: Thank you, your Honor.

The Court: You had better prepare a written



judgment of dismissal on this question of jurisdiction, Mr. McCall, so that the record will be complete on it.

Mr. McCall: You mean an order overruling——

The Court: Overruling the plea on the question of jurisdiction.

Mr. McCall: Yes. [267]

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Los Angeles, California

Wednesday, September 3, 1947. 10:00 A.M.

The Clerk: No. 6322-M Civil, Fred Elio Iob, et al., vs. Los Angeles Brewing Company, Inc., et al., for setting for trial.

The Court: I thought that case was disposed of and everybody back at work and everybody satisfied.

Mr. McRoberts: I am afraid that we thought your Honor might become lonesome if we were not here for some length of time in some phase of the case. It was my suggestion that we do as we did in the Stewart McKee case, which is a matter pending before Judge Beaumont, and there is a case before Judge Weinberger, which is under submission.

\* \* \*

The Court: I am of the same opinion as I was at the conclusion of the hearing, gentlemen. I don't believe this case is an injunction case. I don't believe it is a veterans' case at all. I think it is a labor case of the type that will not be adjusted nor



settled by any decision in this case, excepting in a way that will be destructive and detrimental to all parties concerned.

I don't think that there is any change in the court's mind since the hearing on that phase of it.

I do feel that on the phase of the right to compensation, there could be that issue there, and I think your suggestion is very pertinent in that regard, that you gentlemen can agree, assuming that the veterans would be entitled to be restored, upon what would be the compensation or the loss of wages for the period that is applicable in this case. If the defendant will deposit a sufficient amount of money to insure any recovery that is to be made in that regard and deposit it with the registry, under a stipulation, I think then we can await the decision in the other case.

Mr. McRoberts: Does your Honor care to make a minute order to that effect?

The Court: Yes, that is what I am trying to do, and to get it for the reporter.

It is ordered that the injunction will be denied, and that upon the deposit of the Los Angeles Brewing Company, Inc., [270] the respondent in the case, of an amount sufficient to liquidate and discharge any unpaid wage claim that may be hereafter determined, further proceedings in this case will be suspended until November 4th—that is the monthly calendar day in November—and at that time, if there is anything left to try, we will try it.

Now, you gentlemen should be able to stipulate

as to the amount. It is a mere matter of mathematics, I think.

Mr. McRoberts: Thank you, your Honor.

The Court: On the filing of such stipulation, the amount will be deposited in the registry.

The Clerk: To be called for setting on that day, your Honor?

The Court: Yes, to be called on that day for setting, or to be disposed of. [271]

\* \* \*

Los Angeles, California

Monday, December 20, 1948. 10:00 A.M.

The Court: Call the calendar.

The Clerk: No. 6322-M Civil, Fred Elio Iob, et al., vs. Los Angeles Brewing Company, Inc., et al., resetting for trial or disposition.

The Court: Gentlemen, I have read the motion or application on the part of the petitioners for leave to propound interrogatories. I think the procedure there is somewhat unusual, but regardless of that aspect of it, I don't see anything in the answers that would modify the view of this court as already expressed.

I have been in Arizona for a week trying a case there, and I haven't been able to put the views of the court into a short memorandum, which I shall do this week and file at some time during the week. In order for the record to be clear, we ought to specify a day when the memorandum will be filed.

I think I can do it by Thursday of this week, so we will continue this matter until 2:00 o'clock on

Thursday afternoon, and in the meantime I will prepare a memorandum to decide the issues. I am still of the same view as I was originally. There has been nothing in our reading or in anything that has been submitted which modifies the view of the court as tentatively expressed throughout the proceedings.

With regard to the other case in this court, has that [274] been decided—the San Diego case?

Mr. McCall: No, your Honor.

Mr. Alsup: No, your Honor.

Mr. McCall: That is to be submitted this afternoon, as I understand it, at 2:00 o'clock.

The Court: I will formulate the court's views in a memorandum for the preparation of findings of fact and conclusions of law. I shall do that on or before Thursday of this week, and I will continue this matter until December 23rd at 2:00 o'clock in the afternoon.

Mr. McCarthy: Will it be necessary for myself to come down from San Francisco at that time?

The Court: I don't think so, Mr. McCarthy. I don't think there is anything that requires that. Findings, of course, will have to be prepared.

Mr. McCarthy: That is another matter. There will be no other procedure, other than the filing of the court's memorandum?

The Court: That is right. I am glad to see you here.

Mr. McCarthy: Thank you, your Honor. [275]

Los Angeles, California

Thursday, December 23, 1948. 2:00 P.M.

The Court: Call the case, Mr. Clerk.

The Clerk: No. 6322-M Civil, Fred Elio Iob, et al., vs. Los Angeles Brewing Company, Inc., et al., resetting for trial or disposition.

The Court: Anything further, gentlemen?

Mr. McCall: Nothing further, your Honor.

Mr. Alsup: Nothing further for the respondent.

The Court: I will read a memorandum of decision, gentlemen. I may add to it a little, but it contains, I think, in a complete manner the conclusions of the court on the matter. [277]

\* \* \*

Accordingly, gentlemen, the findings of fact, conclusions of law, and judgment of dismissal for the respondent company is ordered.

You will prepare those, will you, counsel, and serve them? [285]

\* \* \*

### CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 17th day of May, A.D., 1949.

/s/ MARIE G. ZELLNER,  
Official Reporter.

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[Endorsed]: No. 12247. United States Court of Appeals for the Ninth Circuit. Fred Elia Iob, Samuel M. Dobbs and Waldemar F. Ullrich, Appellants, vs. Los Angeles Brewing Co., Inc., Joint Local Executive Board of California, Bottlers Local Union No. 896, Brewers, Maltsters & Yeast Workers Local Union No. 893 of the International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers of America, Walter Eckberg, Anthony Zeigler, Thomas Vacca and J. S. Allwine, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed May 28, 1949.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

FRED ELIO IOB, et al.,

Petitioners-Appellants,

vs.

LOS ANGELES BREWING COMPANY, INC.,  
a Corporation, et al.,

Respondents-Appellees.

### MOTION FOR EXTENSION OF TIME

The Appellants-Petitioners Fred Elia Iob, Samuel M. Dobbs, and Waldemar F. Ullrich respectfully move the Court for an extension of time until May 30, 1949, within which to file the record, docket the case, and otherwise perfect the appeal to this Court from the United States District Court for the Southern District of California.

The ground of Motion is that said appeal cannot be perfected and docketed by April 28, 1949, the date allowed by Order of the District Court, for the reasons set forth in the Affidavit of James C. R. McCall, Jr., hereto attached.

JAMES M. CARTER,

United States Attorney.

CLYDE C. DOWNING,

Assistant U. S. Attorney,

Chief of Civil Division.

/s/ JAMES C. R. McCALL, JR.,

Assistant U. S. Attorney, Attorneys for Appellants-  
Petitioners.



[Title of Court of Appeals and Cause.]

AFFIDAVIT OF JAMES C. R. McCALL, JR.,  
FOR EXTENSION OF TIME TO PERFECT  
AND DOCKET APPEAL

United States of America,  
Southern District of California—ss.

James C. R. McCall, Jr., being first duly sworn,  
deposes and says:

That in this case, which is No. 6322-M Civil in the United States District Court for the Southern District of California, styled Fred Elia Iob, et al., Petitioners, vs. Los Angeles Brewing Company, Inc., a Corporation, et al., Respondents, final judgment was entered on December 31, 1948, and Notice of Appeal therefrom by the Appellants-Petitioners was filed on January 28, 1949.

Thereafter, on March 8, 1949, the time for perfecting and docketing the appeal was extended by Order of the District Court to April 28, 1949.

That it is impossible to perfect and docket said appeal by April 28, 1949, and an extension of time therefor to May 30, 1949, is needed.

That this is a suit in which three veterans of the Armed forces of the United States were discharged during their re-employment year for their lack of membership in a labor union with which their employer had entered into a closed-shop contract after they left their positions of employment to enter upon service in said Armed forces of the United States, and before the termination of

their statutory year of re-employment, following their respective returns to said positions. Said veterans were not members, nor were they required to belong to said labor union as a condition of employment prior to their military service. Claiming that they were discharged within the employment year in violation of Section 8 of the Selective Training & Service Act of 1940, as amended—(50 U.S.C.A. Sec. 308)—they brought this suit in said District Court; and said suit was dismissed by the judgment aforesaid, of December 31, 1948, on the ground that they, as veterans, were bound by the labor union membership requirement of the closed-shop contract entered into during their military absence and within one year after their return.

That the United States Attorney for the Southern District of California, through affiant who is an Assistant United States Attorney for said District, represented the Appellants-Petitioners in the trial of said case, as required by Title 50, United States Code, App. Sec. 308(e); and this appeal is being prosecuted for said veterans by said United States Attorney upon authorization of the Attorney General of the United States, the Department of Justice bearing the expense of the appeal under the provisions of said Selective Training & Service Act, aforesaid. That the Attorney General authorized the filing of Notice of Appeal, but did not authorize the United States Attorney to perfect said appeal until April 11, 1949, when a letter granting the taking of such appeal at the expense of the De-

partment of Justice, dated April 6, 1949, was received by this affiant. One probable reason for the delay in authorizing the perfecting of the appeal was that there is pending in the United States Supreme Court a case on appeal from this Court—(United States Court of Appeals for the Ninth Circuit)—entitled *Aeronautical Industrial District Lodge 727 vs. James L. Campbell et al.*, No. 3333 in the Supreme Court, which case involves the legal issue of whether collective bargaining representatives may interfere with, or materially alter the terms and conditions of employment of a returned veteran during his re-employment year, and the opinion on that appeal could prove determinative of the legal issue in this case. Said case of *Aeronautical Industrial District Lodge 727 vs. James L. Campbell et al.*, No. 3333 Supreme Court, was argued in the United States Supreme Court on or about January 31, 1949, and has not yet been decided although a decision thereon is momentarily expected by the parties involved. The Attorney General probably wished to await the decision in that case before authorizing, or declining to authorize, the perfecting of the appeal in this case—(*Iob v. Los Angeles Brewing Company, Inc.*) at the expense of the Department of Justice.

Affiant is advised by the Court Reporter that it will be impossible to make a transcript of record and file the same before April 28, 1949, and the completion of the record on that date will not permit the Appellants-Petitioners to designate the record on





appeal, and file the record in this court within the time provided for in the extension granted by the District Court.

That an extension of time to May 30, 1949, to file the record, docket the case, and perfect the appeal is, therefore, urgently needed on behalf of said Appellants-Petitioners.

That some of the interested parties in this appeal are represented by out-of-town counsel, and it is impractical to give the usual notice of this application for extension of time.

/s/ JAMES C. R. McCALL, JR.,  
Assistant U. S. Attorney.

Subscribed and Sworn to before me this 18th day of April, 1949.

EDMUND L. SMITH,  
Clerk, United States District Court, Southern District of California.

[Seal] By /s/ WM. A. WHITE,  
Deputy.

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[Title of Court of Appeals and Cause.]

ORDER FOR EXTENSION OF TIME FOR  
APPELLANTS TO PERFECT APPEAL

For good cause shown, It Is

Ordered that the time within which the Record on Appeal may be filed, the case docketed, and the



appeal otherwise perfected to this Court, be, and is hereby extended to May 30, 1949.

Dated: This 20th day of April, 1949.

/s/ ALBERT LEE STEPHENS,

/s/ HOMER T. BONE,

/s /WM. E. ORR,

Judges of the United States Court of Appeals for  
the Ninth Circuit.

[Endorsed]: Filed April 20, 1949.

[Endorsed]: Refiled May 28, 1949.

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[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH AP-  
PELLANTS INTEND TO RELY ON THE  
APPEAL

Come now the Appellants Fred Elia Iob, Samuel M. Dobbs, and Waldemar F. Ullrich and state, pursuant to Rule 19(6) of this Court, that the points on which they intend to rely on the appeal are:

I.

The discharges of the appellants, on demand of the appellee unions and union officials, were unauthorized and unjustified by the terms of the Collective Bargaining Agreement dated July 28, 1946, and constitute a breach of the working conditions therein set forth; and the District Court misconstrued and misapplied said Collective Bargaining Agreement in holding that it required the appellants' discharges because of their non-membership

in Local Union Nos. 896 and 893 of the International Brotherhood of Teamsters, etc.

II.

The appellants' discharges were "without cause" within the meaning of Section 8 of the Selective Training Service Act; and constituted violations of said Act; and the District Court erred in failing so to hold.

III.

The District Court erred in refusing to issue mandatory and protective injunctions to restore the appellant veterans to their positions of employment.

IV.

The District Court erred in failing to require the respondent Brewing Company to compensate them for their loss of wages suffered by reason of said discharges and in failing to exact similar compensation for them from the respondent labor unions and officials thereof.

V.

Appropriate relief for the appellant veterans should be ordered by this Court.

JAMES M. CARTER,

United States Attorney.

CLYDE C. DOWNING and

JAMES C. R. McCALL,

Assistant U. S. Attorneys.

/s/ JAMES C. R. McCALL,

Attorneys for Appellants-  
Petitioners.

[Endorsed]: Filed May 28, 1949.

[Title of Court of Appeals and Cause.]

APPELLANTS' DESIGNATION OF THE  
PARTS OF THE RECORD TO BE PRINTED

Come now the Appellants Fred Elia Iob, Samuel M. Dobbs, and Waldemar F. Ullrich and, pursuant to Rule 19(6) of this Court, designate for printing the following portions of the Clerks and Reporters Transcripts, to wit:

1. The following parts of the Clerk's Transcript:

Petition for Enforcing of Re-employment Rights, pages 1-9.

Answer of Los Angeles Brewing Company, pages 10-14.

Exhibit A thereto, pages 14-36.

Minute Entries, pages 38-40.

Motion for New Trial, pages 42-43.

Minute Entry May 19, 1947, page 46.

Amended Petition, pages 47-57.

Order to Show Cause, page 58.

Minute Entry June 5, 1947, page 63.

Minute Entry June 7, 1947, pages 92-93.

Answer of Joint Local Executive Board, etc., pages 224-244.

Answer of Los Angeles Brewing Company, pages 360-374.

Exhibit B thereto, page 398.

Minute Entry September 3, 1947, page 425.

Stipulation as to Bond, page 426.

Petitioners' Request for Admissions, pages 428-431.

Schedules 1, 2, 3 and 4, and Exhibit A thereto, pages 432-440.

Reply of Joint Local Executive Board to Request for Admission, pages 442-446.

Reply of Los Angeles Brewing Company, pages 446A-446F.

Minute Entry December 23, 1947, page 447.

Memorandum of Decision, pages 448-454.

Findings of Fact and Conclusions of Law, pages 455-464.

Judgment December 31, 1948, page 465.

Notice of Appeal, page 467.

Order Extending Time, page 469.

Designation of Record on Appeal, page 470.

Certificate of Clerk, page 471.

2. The following parts of the Reporter's Transcript of Proceedings:

From Page 1, Line 1, through Page 63, Line 9.

From Page 79, Line 14, through Page 80, Line 10.

From Page 88, Line 10, through Page 143, Line 6.

Page 155, Line 1.

From Page 160, Line 4, through Page 164, Line 25.

From Page 171, Line 6, through Page 176, Line 17.

From Page 179, Line 21, through Page 184, Line 7.

Page 190, Lines 1 through 12.

From Page 193, through Lines 1 to 6.

Page 257, Line 17 through 19.

From Page 259, Line 1, through Page 260, Line 16.

From Page 263, Line 17, through Page 267, Line 13.

Page 269, Line 1, through Line 13.

From Page 270, Line 1, through Page 271, Line 15.

From Page 274, Line 1, through Page 275, Line 20.

Page 777, Line 1 through 12.

Page 285, Line 10 through 14.

3. The appellants' points on which they intend to reply and this designation of record to be printed.

JAMES M. CARTER,

United States Attorney.

CLYDE C. DOWNING and

JAMES C. R. McCALL,

Assistant U. S. Attorneys.

/s/ JAMES C. R. McCALL,

Attorneys for Appellants-  
Petitioners.

[Endorsed]: Filed May 28, 1949.

[Title of Court of Appeals and Cause.]

APPELLEES' DESIGNATION OF THE  
PARTS OF THE RECORD TO BE PRINTED

Comes Now appellees, The Joint Local Executive Board of California, Bottlers' Local Union No. 896 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Anton Ziegler, Brewers, Maltsters and Yeast Workers Local Union No. 896 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Thomas Vacca and J. S. Allwine and, pursuant to Rule 19(6) of this Court, designates for printing the following portions of the Clerks and Reporters Transcripts, to wit:

1. The following parts of the Clerk's Transcript:

Motion to Dismiss, Vacate and Set Aside Alias Summons, Amended Petition for Enforcement of Veteran Employment Rights, Order to Show Cause, and Affidavits and Memorandum of Points and Authorities in Support of Motion, pages 65-71.

Motion to Dismiss, pages 72-73.

Affidavit of James M. McRoberts, pages 74-91.

2. The following Parts of the Reporter's Transcript of Proceedings:

Page 193, Line 8, through Page 194, Line 3.

Page 199, Line 18, through Page 200, Line 6.

Page 227, Line 24, through Page 228, Line 16.



Page 246, Line 8, through Page 248, Line 6.

Page 249, Line 8, through Page 250, Line 23.

Page 251, Line 6, through Line 9.

Page 251, Line 22, through Page 252, Line 13.

Page 255, Line 3, through Page 255, Line 7.

Page 260, Line 17, through Page 262, Line 7.

Page 266, Line 22, through Line 24.

Page 267, Line 7, through Line 13.

Dated: June 3, 1949.

/s/ P. H. McCARTHY, JR.,

Attorney for The Joint Local Executive Board, Bottlers' Local Union No. 896 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Anton Ziegler, Brewers, Maltsters & Yeast Workers Local Union No. 896 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Thomas Vacca and J. S. Allwine, Appellees.

[Endorsed]: Filed June 6, 1949.

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[Title of Court of Appeals and Cause.]

DESIGNATION BY APPELLEE OF ADDITIONAL PORTIONS TO RECORD TO BE PRINTED

Appellee Los Angeles Brewing Co. (now Main Street Corporation and incorrectly designated in the

pleadings herein as Los Angeles Brewing Company, Inc.) designates for printing pursuant to Rule 19(6) of this Court the following additional matters not designated by appellants:

1. The following portions of the Reporter's Transcript of Proceedings:

From page 80, line 12, through page 88, line 7.

From page 143, line 7, through page 145, line 23.

From page 177, line 12, through page 179, line 20.

From page 184, line 14, through page 185, line 10.

From page 188, line 12, through page 188, line 19.

2. This designation.

Dated June 4, 1949.

O'MELVENY & MYERS,  
W. B. CARMAN, JR.,  
WILLIAM W. ALSUP.

By /s/ WILLIAM W. ALSUP,  
Attorneys for Appellee.

[Endorsed]: Filed June 6, 1949.

